

**Vol. XVII**  
**TRANSCRIPT OF RECORD**

(Pages 5222 to 5321)

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**Supreme Court of the United States**

**OCTOBER TERM, 1951**

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**No. 428**

**PENNSYLVANIA WATER AND POWER COMPANY  
AND SUSQUEHANNA TRANSMISSION COMPANY  
OF MARYLAND, PETITIONERS,**

**vs.**

**FEDERAL POWER COMMISSION ET AL.**

**No. 429**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION,  
PETITIONER,**

**vs.**

**FEDERAL POWER COMMISSION**

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**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**PETITIONS FOR CERTIORARI FILED NOVEMBER 16, 1951**

**CERTIORARI GRANTED FEBRUARY 4, 1952**

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 10,531.

PENNSYLVANIA WATER & POWER COMPANY, A  
CORPORATION, AND SUSQUEHANNA TRANSMIS-  
SION COMPANY OF MARYLAND, A CORPORATION,  
*Petitioners,*

*v.*

FEDERAL POWER COMMISSION,  
*Respondent,*

**PETITION FOR REVIEW.**

(Filed February 8, 1950.)

*To the Honorable, the Judges of the United States Court  
of Appeals for the District of Columbia Circuit:*

Petitioners, PENNSYLVANIA WATER & POWER COMPANY (Penn Water), and SUSQUEHANNA TRANSMISSION COMPANY OF MARYLAND (Transmission Company), being aggrieved by an "Order Rejecting Proposed 'FPC Electric Tariff' and prescribing Rate Schedules", issued by the Federal Power Commission (the Commission) October 27, 1949 in its Docket No. IT-5915, and being aggrieved by an "Order Denying Application for Rehearing of Order issued October 27, 1949" issued by the Commission December 15, 1949 in the same proceeding, hereby file their Petition for Review under Section 313 (b) of the Federal Power Act (16 U. S. C. § 825-1 (b); 49 Stat. 860), and pursuant to Rule 38 of this Court, to review, hold unlawful, and set aside such orders of October 27, 1949 and December 15, 1949, and certain findings and conclusions incorporated therein, in accordance with the provisions of Section 10 of the Adminis-

trative Procedure Act (5 U. S. C. § 1009; 60 Stat. 243); and Petitioners represent and show to the Court:

**The Nature of the Proceedings as to Which Review Is Sought.**

Penn Water is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. It owns and operates a hydro-electric generating plant and a steam-electric generating plant on the Susquehanna River at Holtwood, Pennsylvania. It is engaged in the generation, transmission and distribution of hydro- and steam-electric power and renders other services for use in public service.

II. Transmission Company is a corporation organized and existing under the laws of the State of Maryland and is a wholly owned subsidiary of Penn Water. It owns transmission lines wholly within the State of Maryland, some of which are connected to the transmission lines of Penn Water at the Pennsylvania-Maryland State line.

III. On September 1, 1944, the Commission issued in its Docket IT-5915, a general Order of investigation to determine whether any rates, charges, classifications, rules, regulations, practices, or contracts of Penn Water, subject to the jurisdiction of the Commission, were unjust, unreasonable, unduly discriminatory, or preferential. By Order dated October 3, 1944, the proceeding was enlarged to include Transmission Company as a respondent. Hearings commenced on April 15, 1946, and were concluded on July 16, 1947.

IV. On January 5, 1949, the Commission issued its Order and accompanying Opinion No. 173 which provided in part for a reduction in Penn Water's revenues derived from services rendered to Pennsylvania Power & Light Company (PP & L), Philadelphia Electric Company (Philadelphia Company), Metropolitan Edison Company (Metro-



politan Company), and Consolidated Gas Electric Light and Power Company of Baltimore (Baltimore Company). The Order contained no provision regulating Penn Water's revenues from its only other customer, The Pennsylvania Railroad Company, and the opinion disclaimed any intention to regulate such revenues. By paragraphs (C) and (D) of said Order Penn Water was required to file tariffs effecting specified reductions in revenues from PP & L, Philadelphia Company and Metropolitan Company, and effecting a reduction in revenue from Baltimore Company in accordance with a specific formula contained in such paragraph (D). A copy of the Commission's Order issued January 5, 1949, is attached hereto and made a part hereof as Exhibit A.

V. Petitioners filed an application with the Commission for a rehearing of said Order of January 5, 1949, which was denied by a subsequent Order of the Commission issued February 28, 1949, also accompanied by a Commission Opinion No. 173-A.

VI. On April 22, 1949, Petitioner filed in this Court their Petition for Review of, among others, the Commission's Orders of January 5, 1949 and February 28, 1949 (No: 10,236) and on April 28, 1949, this Court issued an Order staying the effectiveness of the Commission's order of January 5, 1949, insofar as it required a reduction in Penn Water's rates and charges to the aforesaid customers but requiring Penn Water to file with the Commission the rate schedules required by its Order of January 5, 1949.

VII. On May 31, 1949, Penn Water filed with the Commission its "FPC Electric Tariff, Original Volume I", consisting in part of four rate schedules for services to PP & L, Philadelphia Company, Metropolitan Company and Baltimore Company and providing for the reduction in Penn Water's revenues ordered in paragraphs (C) and (D) of the Commission's Order of January 5, 1949. A copy of such

*Petition for Review*

tariff is attached hereto and made a part hereof as Exhibit B.

VIII. On June 2, 1949, the Commission certified and filed with this Court the transcript of the record of the proceedings in its Docket No. IT-5915 and thereupon exclusive jurisdiction to affirm, modify or set aside the Order of January 5, 1949 vested in this Court.

IX. On October 27, 1949, the Commission issued its Order amending and modifying its Order of January 5, 1949 and rejecting Penn Water's rate schedules filed on May 31, 1949 on the alleged ground that the said schedules failed to comply with its Opinions and Orders in its Docket No. IT-5915 and also prescribing its own rate schedules for Penn Water's services to PP & L, Philadelphia Company, Metropolitan Company and Baltimore Company.

X. The Commission's Order of October 27, 1949 amends and modifies its Order of January 5, 1949 in the following respects:

(a) It requires the rate schedule for services to Baltimore Company to include an annual credit to Baltimore Company in an amount of \$141,777 in excess of the credits required by paragraph (D) of the Order of January 5, 1949.

(b) It requires the rate schedule for services to Baltimore Company to include a credit to Baltimore Company for fuel cost adjustment in connection with services to The Pennsylvania Railroad Company in accordance with a formula specified in said Order which credit was not required by or even referred to in the Commission's Order of January 5, 1949.

(c) It requires the rate schedules for services to PP & L, Philadelphia Company and Metropolitan Company to include a provision for fuel cost adjustment in accordance with a formula specified in said order which provision for

fuel cost adjustment was not required by or even referred to in the Commission's Order of January 5, 1949.

(d) It requires a reduction in the revenues of Penn Water which has the effect of reducing Penn Water's rate of return from its public utility business which the Commission seeks to regulate below the  $5\frac{1}{4}\%$  rate, which the Commission has found to be a fair rate of return in its Order of January 5, 1949.

A copy of the Commission's Order of October 27, 1949, is attached hereto and made a part hereof as Exhibit C.

XI. On November 25, 1949, Petitioners filed with the Commission their application for rehearing of the Order issued October 27, 1949. A copy of such application for rehearing is attached hereto and made a part hereof as Exhibit D.

XII. On December 15, 1949, the Commission issued its Order denying Petitioner's application for rehearing of the Order issued October 27, 1949. A copy of the said Order of December 15, 1949 is attached hereto and made a part hereof as Exhibit E.

XIII. Petitioners are here before this Honorable Court for review of the Commission's Orders of October 27, 1949 and December 15, 1949, and the actions and rulings of the Commission in connection therewith in its Docket No. IT-5915.

#### **The Facts and Statutes Upon Which Jurisdiction Is Based.**

I. The final Orders of the Commission of which review is sought were issued October 27, 1949, and December 15, 1949, purportedly under the provisions of the Federal Power Act (16 U. S. C. § 791a *et seq.*; 41 Stat. 1063; 46 Stat. 797; 49 Stat. 838, 847). Petitioners have applied to the Commission for a rehearing of the Order of October 27, 1949, within the thirty days prescribed by Section 313 (a) of the Act (16 U. S. C. § 825-1 (a), 49 Stat. 860), as shown

by Exhibit D hereto. By its Order of December 15, 1949, the Commission denied rehearing of its Order of October 27, 1949. This Petition for Review is filed within sixty days after the Order of the Commission denying rehearing; and a copy of this Petition for Review is being served forthwith upon a member of the Commission; as required by Section 313 (b) of the Act (16 U. S. C. § 825-1 (b); 49 Stat. 860).

II. Section 313 (b) of the Federal Power Act provides for judicial review of Orders of the Commission in this Court by written petition to review praying that the Orders of the Commission be modified or set aside in whole or in part. Section 313 (b) also provides that if any party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the Court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms as to the Court may seem proper.

III. Section 10 (a) of the Administrative Procedure Act (5 U. S. C. § 1009 (a); 60 Stat. 243) entitles Petitioners to judicial review of the Commission's Orders as persons suffering legal wrong because of such actions and as persons adversely affected and aggrieved by such actions. Section 10 (b) of such Act (5 U. S. C. § 1009 (b)) specifies the form of proceeding for such review to be that provided by the Federal Power Act, and in the event of inadequacy thereof, any applicable form of legal action. Section 10 (c) of such Act (5 U. S. C. § 1009 (c)) makes reviewable each of the Orders sought to be reviewed herein, and all preliminary, procedural, and intermediate orders, actions, and rulings of the Commission in its Docket No. IT-5915. Section 10 (e) of such Act (5 U. S. C. § 1009 (e)) provides



for the scope of judicial review and the authority of the Court in connection therewith.

### **The Relief Prayed.**

Petitioners pray that:

I. The said Commission Orders of October 27, 1949 and December 15, 1949 be reviewed by this Court; and that said Orders be held unlawful and set aside, or modified as may be necessary to the extent such Orders are held unlawful; or that such other Orders may be made herein as to this Court may seem just;

II. All preliminary, procedural, and intermediate orders, actions, and rulings of the Commission in its Docket No. IT-5915 be reviewed and held unlawful by the Court to the extent necessary to render complete judicial relief from the actions of the Commission;

III. Petitioners hereby apply to the Court for leave to adduce additional evidence as specified in the offers of proof contained in paragraphs II (1) (b) (ii), II (1) (b) (iii), and II (1) (b) (iv) of Petitioners' Application for Rehearing of Order issued October 27, 1949, attached hereto as Exhibit D; and as a showing to the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, Petitioners state: that on their face all of such facts sought to be proved are material as facts showing the monetary effect of the requirements of the said Order of October 27, 1949, as such Order amended and modified the requirements of the Commission's Order of January 5, 1949, and that the Commission, by its Order of December 15, 1949, refused to give Petitioners any opportunity to adduce such evidence; and

IV. This Court grant such further relief as may seem just and proper in the premises.

**The Points on Which Petitioners Intend to Rely.**

I. The Federal Power Commission had no jurisdiction, authority or power to issue its said Orders of October 27, 1949 and December 15, 1949, for the following reasons:

(A) Pursuant to Section 313 (b) of the Federal Power Act, exclusive jurisdiction to amend or modify the Commission's Orders of January 5, 1949 and related Orders in its Docket No. IT-5915, vested in this Court, upon the filing with this Court of the transcript of the record in such Docket on June 2, 1949. The Commission's Order of October 27, 1949 modifies the Order of January 5, 1949 and related Orders, and requires additional reductions in Petitioners' revenues to the extent indicated in paragraph X of the statement of the Nature of the Proceedings hereinabove.

(B) The effect of the Commission's Order of October 27, 1949, if enforced, would be to reduce Penn Water's rate of return from its public utility business which the Commission seeks to regulate below the 5¼% rate, which the Commission has found to be a fair rate of return in its Order of January 5, 1949.

(C) The Commission's Order of October 27, 1949 requires the introduction of fuel cost adjustment clauses into Penn Water's rate schedules for services to PP & L, Philadelphia Company and Metropolitan Company without prior notice to Penn Water and without affording Penn Water or its said three customers an opportunity to be heard thereon or to present evidence with respect thereto, in violation of Sections 20 (16 U. S. C. § 813; 41 Stat. 1073) and 206 (16 U. S. C. § 824e; 49 Stat. 852) (to the extent, if any, that such section may be applicable to Penn Water) of the Federal Power Act, Sections 4 and 5 of the Administrative Procedure Act (5 U. S. C. §§ 1003, 1004; 60 Stat. 238, 239) and the Fifth Amendment to the Constitution of the United States.

## Petition for Review

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(D) The rate schedules prescribed by said Order of October 27, 1949, insofar as the additional amount of \$141,777 required to be credited to Baltimore Company is concerned, constitute an adjustment or revision of the divisional agreement between Penn Water and Baltimore Company for division of revenues received from The Pennsylvania Railroad, without authority under the Federal Power Act to regulate such division of rates.

(E) The said Order of October 27, 1949 constitutes an attempt to prescribe rate reductions in excess of the reductions prescribed by the Commission's Order of January 5, 1949, effective retroactively to February 1, 1949, without authority under the Federal Power Act to require retroactive rate adjustments.

II. The said Commission Orders of October 27, 1949 and December 15, 1949, the statements, findings and conclusions contained therein, all preliminary, procedural, and intermediate orders, actions, and rulings of the Commission, and the rate schedules prescribed thereby, are unlawful and unconstitutional in that they are unreasonable, arbitrary, capricious, discriminatory, in excess of the Commission's statutory jurisdiction, authority, and limitations under the Federal Power Act and contrary to the provisions of such Act, without observance of the procedure required by law, unsupported by substantial evidence, contrary to the substantial evidence, and result from consideration by the Commission of matters presented *ex parte* by other parties and from the failure of the Commission to make proper findings and determine proper facts and conclusions of law; and if enforced would deprive Petitioners of their property without due process of law and without just compensation, in violation of the Fifth Amendment to the Constitution of the United States; all as set forth in Petitioners' Applications for Rehearing and in Petitioners' Petition for Review of the Commission's Order of January 5, 1949 and related Orders filed with this Court April 22,

*Petition for Review*

1949 in Case No. 10,236, which Petition for Review is incorporated herein by reference.

Respectfully submitted,

Sgd. RANDALL J. LeBOEUF, JR.,  
Randall J. LeBoeuf, Jr., rs

Sgd. CRAIGH LEONARD,  
Craig Leonard, rs  
15 Broad Street,  
New York 5, New York,

Sgd. F. G. AWALT,  
F. G. Awalt, rs

Sgd. RAYMOND SPARKS,  
Raymond Sparks,

Sgd. DARYAL A. MYSE,  
Daryal A. Myse, rs  
822 Connecticut Avenue, N. W.,  
Washington 6, D. C.,

Sgd. PRESTON C. KING, JR.,  
Preston C. King, Jr., rs  
Munsey Building,  
Washington 4, D. C.,

*Counsel for Petitioners.*

Dated at Washington, D. C.  
February 8, 1950.



*Petition for Review*

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DISTRICT OF COLUMBIA, }  
CITY OF WASHINGTON, } ss.:

The undersigned, being first duly sworn, states that he is counsel for the Petitioners in the foregoing Petition; that he has read said Petition and knows the contents thereof; and that all of the statements contained therein are true and correct to the best of his knowledge, information or belief.

Sgd. **RAYMOND SPARKS.**  
Raymond Sparks.

Sworn to and subscribed before me, a notary public, in and for the said District of Columbia, this 8th day of February, 1950.

Sgd. **FLORA A. MYERS,**  
*Notary Public.*  
My commission expires October 14, 1953.

**EXHIBIT A.****UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION**

Before Nelson Lee Smith, Chairman, Thomas C.  
Commissioners: Buchanan, Claude L. Draper and Leland  
Olds.

January 4, 1949  
In the matter of } Docket No.  
Pennsylvania Water & Power Company } IT-5915.

**ORDER REDUCING RATES**

Upon consideration of the record in the above-entitled proceeding and the arguments adduced, and having this day issued its Opinion No. 173 in this matter, which hereby is incorporated by reference and made a part hereof—

The Commission further *finds* that:

(1) Penn Water (successor through reorganization under the laws of Pennsylvania, on January 13, 1910, of McCall Ferry Power Company which had been formed by the merger, on April 14, 1905, of Hillside Water & Power Company and Susquehanna Water & Power Company) owns, operates and maintains hydroelectric and steam-electric generating facilities, all located on the Susquehanna River at Holtwood, Pennsylvania, about eight miles below the hydroelectric project of Safe Harbor, about nine miles north of the Pennsylvania-Maryland boundary line, and about 61 miles northeast of the City of Baltimore. Penn Water's hydro plant, comprising 10 main generating units (eight, 25-cycle, and two, 60-cycle), has an effective capacity of 104,000 kw; its steam plant, comprising two 60-cycle generating units, has an effective capacity of 26,000 kw. There are also two 5,000 kw, 25/60 cycle frequency changers.

(2) Safe Harbor Water Power Corporation (Safe Harbor) owns, operates and maintains a hydroelectric plant and certain appurtenant transmission facilities, all located in Pennsylvania on the Susquehanna River about 17 miles north of the Pennsylvania-Maryland boundary line. Safe Harbor's hydro plant, comprising seven main generating units (five, 60-cycle and two, 25-cycle) has an effective capacity of 230,000 kw. Safe Harbor owns, operates, and maintains the afore-described hydroelectric power project under a license for Project No. 1025, first issued April 22, 1930, by this Commission, pursuant to the Federal [Water] Power Act, which, as amended, is now Part I of the Federal Power Act (Act).

(3) Consolidated Gas Electric Light and Power Company of Baltimore (Baltimore Company) owns, operates and maintains, among other facilities, steam-electric generating facilities located in and near Baltimore, Maryland. Such facilities include four plants, comprising sixteen generating units (eight, 60-cycle, and eight, 25-cycle), having a total effective capacity of 479,000 kw.

(4) Susquehanna Transmission Company of Maryland (Transmission Company) is a wholly-owned subsidiary of Penn Water, engaged only in the transmission of electric energy in Maryland for Penn Water, Safe Harbor and Baltimore Company. Of the transmission facilities referred to in (5) below, those located in Maryland are owned and operated by Transmission Company.

(5) Penn Water owns and operates transmission facilities in Pennsylvania which have been constructed and are operated and maintained in combination with those of Transmission Company in Maryland to form a transmission network, including: two 220 kv, 60-cycle, three-phase, single, transmission circuits extending from Safe Harbor to points of connection with Baltimore Company near its Westport and Riverside steam-electric plants in Maryland, and to a point of connection with Potomac Electric Power

Company (PEPCO) near Takoma Park, Maryland; four 132 kv, 25-cycle, single-phase, transmission circuits extending from the Conestoga Substation, near the Safe Harbor hydro plant, to a point of connection with facilities of the Pennsylvania Railroad (Railroad) at Perryville, Maryland; two 66 kv, 60-cycle, three-phase, transmission circuits between the Safe Harbor and Penn Water plants, which are tapped by lines owned and operated by Pennsylvania Power & Light Company (PP&L) extending from the Lehman Farm Substation to Lancaster, Pennsylvania, and from the Donegal tap to Harrisburg, Pennsylvania; two 66 kv, 60-cycle, three-phase, transmission circuits extending from the Holtwood Substation to a point of connection with Metropolitan Edison Company (Metropolitan Company) at York, Pennsylvania; two 66 kv, 60-cycle, three-phase, transmission circuits extending from the Holtwood Substation to a point of connection with Philadelphia Electric Company (Philadelphia Company) at Coatesville, Pennsylvania; two 66 kv, three-phase, transmission circuits (one, 60-cycle, and one, 25-cycle) extending from the Holtwood Substation to a nearby point of connection with a line owned and operated by PP&L which continues to Lancaster, Pennsylvania; and four 66 kv, 25-cycle, three-phase, transmission circuits extending from the Holtwood Substation to a point of connection with Baltimore Company at Transmission Company's Highlandtown Substation in the City of Baltimore.

(6) Penn Water, Baltimore Company, and Safe Harbor are parties to a contract dated June 1, 1931, as amended, which by its terms is to continue in effect until 1980. Under that contract, Baltimore Company purchases two-thirds, and Penn Water one-third of Safe Harbor's entire capacity and output of electric energy, and contributes annual payments to Safe Harbor in the same proportion. Payments under such contract, pursuant to the Commission's rate order of November 4, 1946, *Safe Harbor Water Power Corporation*, 5 F. P. C. 265, are sufficient to allow Safe Harbor a 5% rate of return on net investment, after operating ex-



penses, taxes and depreciation. Under this contract, Penn Water provides, maintains, and operates certain transmission facilities, including lines extending from Safe Harbor, Pennsylvania, to Baltimore, Maryland.

(7) Penn Water and Baltimore Company are also parties to a contract dated December 31, 1927, as amended, which continues in effect until 1980, under which Baltimore Company purchases all of the electric capacity and energy, not otherwise disposed of under existing contracts, which are available from Penn Water's own generating facilities, as well as that available to Penn Water through purchase from Safe Harbor, as referred to in (6) above. Under this contract, Baltimore Company pays Penn Water for all of its operating expenses, including taxes, depreciation, and cost of power purchased from Safe Harbor, as well as a return on investment determined by a prescribed method, with a credit for the revenues which Penn Water receives from sales in Pennsylvania.

(8) By means of the transmission circuits referred to in (5) above, electric energy generated in Pennsylvania and consumed in Maryland and the District of Columbia is transmitted from Pennsylvania, and electric energy generated in Maryland and consumed in Pennsylvania is transmitted from Maryland. None of such facilities is used for the generation of electric energy or in local distribution or only for the transmission of electric energy in intrastate commerce, or for the transmission of electric energy consumed wholly by the transmitter.

(9) The transmission circuits referred to in (5) above are facilities for the transmission of electric energy in interstate commerce within the meaning of Section 201 (b) of the Act and are subject to the jurisdiction of this Commission. By reason of ownership and operation of such facilities, Penn Water and Transmission Company are "public utilities" within the meaning of Part II of the Act.

(10) By means of the transmission network referred to in (5) above, the power resources of Penn Water, Safe Harbor, and Baltimore Company referred to in (1), (2) and (3) above, are combined and coordinately operated as an integrated and interconnected electric system (interconnected system) serving areas in the States of Pennsylvania and Maryland as well as electrification requirements of Railroad in Pennsylvania, Maryland, and the District of Columbia.

(11) The interconnected system is designed and operated to supply its power and energy requirements at lowest cost. The output of each of the interconnected generating units flows into the system at such times and in such amounts as will secure maximum utilization of hydroelectric facilities, economy of operation and reliability of service. The contracts referred to in (6) and (7) above, facilitate the achievement of those objectives particularly by the methods of payment which they provide, and by reason of the fact that generation of energy is directed by the coordinated action of load dispatchers in the City of Baltimore, representing the three system companies. The direction of energy flows results from operations governed by consideration of river flow, relative costs of steam generation, and magnitude of loads; and energy moves from generating plants to loads without regard to state boundaries.

(12) The maximum utilization of the interconnected system's hydroelectric generating plants in Pennsylvania, one Penn Water's and one Safe Harbor's, is obtained through their operation in conjunction with the system's steam-electric generating plants, Penn Water's in Pennsylvania and Baltimore Company's four in Maryland. The Penn Water and Safe Harbor ponds impound only 24 hours' supply of water at full draft. During periods of high river flow, which occur principally in the spring months, the hydro plants generate their maximum output continuously, thus saving the maximum amount of fuel in

*Exhibit A to Petition for Review*

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the generation of electric energy by steam. At other times, they can be so operated only part time, and are operated as peaking plants, to help carry the peak loads of the interconnected system, thus taking the place of steam-generated energy at those hours when the least economical steam generating plants would otherwise have to be used. The coordinated operation of the system makes available a larger useful system output at a lower cost than would result if each company were compelled to supply its requirements from its own generating facilities.

(13) As a result of the operations referred to in (12) above, during periods of high river flow, the flow of energy is south from Pennsylvania towards Maryland and at other times, the flow of energy tends to be to the north, although the direction of the flow on the lines crossing the state boundary may change frequently according to the needs of the consumers in Pennsylvania and Maryland.

(14) The operation of the interconnected system, referred to in (1) through (13) above, and the output of that system are in interstate commerce.

(15) Penn Water alone sells firm power and energy to Metropolitan Company under a 1945 agreement, to supply a part of the latter's requirements in York, Pennsylvania; to Philadelphia Company under a 1933 agreement, to supply its requirements in Coatesville, Pennsylvania; and to PP&L, under a 1933 agreement, to supply its requirements in Lancaster, Pennsylvania. In addition, Penn Water alone sells energy to each of these companies in interchange.

(16) Penn Water's sales, referred to in (15) above, are sales for resale in interstate commerce.

(17) Pursuant to the contract referred to in (7) above, Penn Water sells electric energy to Baltimore Company for resale. Energy so sold is transmitted from Pennsylvania to Maryland and is a sale for resale in interstate commerce. Such sale is made possible by the transmission

network, referred to in (5) above, and by the coordinated operation of the interconnected system, referred to in (1) through (13) above.

(18) Each of Penn Water's sales of electric energy referred to in (7) and (15) above is a sale of electric energy at wholesale in interstate commerce subject to the jurisdiction of the Commission under the provisions of Section 201 (b) of the Act. Each rate and charge made, demanded, or received by Penn Water for or in connection with each such sale, including any rate or charge or part thereof, relating to electric energy, power, capacity, frequency control, phase, cycle, special facilities, transmission service, power factor cooperation, or reactive energy, is subject to the rate regulatory provisions of the Act.

(19) A 1939 order of this Commission required Penn Water to apply for a license under the provisions of Part I of the Act for the operation of its hydroelectric project, and the order was affirmed on court review. Thereafter, this Commission entered an order authorizing issuance of a license to Penn Water, but the matter of formal issuance is still pending. In these circumstances, Penn Water, for rate-regulatory purposes, must be treated as a "licensee" within the meaning of the Act.

(20) So much of the electric energy, or "power" within the meaning of Section 20 of Part I of the Act, generated, or developed, by Penn Water's hydroelectric project, as is sold under the contracts referred to in (7) and (15) above, is sold thereunder for sale and distribution in public service by the purchasing companies, or for sale and distribution or use in public service by their customers. By reason of the coordinated operations of the interconnected system referred to in (1) through (13) above, all such electric energy so sold is sold in, and enters, interstate commerce within the meaning of Section 20.

(21) The "States directly concerned" within the meaning of Section 20 are the States of Pennsylvania and



*Exhibit A to Petition for Review*

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Maryland. Such states are "unable to agree" through their properly constituted authorities on the rates or charges of payment within the meaning of that Section.

(22) Penn Water's rates and charges of payment provided for in the contracts described in (7) and (15) above, including any rate or charge, or part thereof, relating to electric energy, power, capacity, frequency control, phase, cycle, special facilities, transmission service, power factor cooperation, or reactive energy, are subject to the jurisdiction of this Commission under Section 20.

(23) Penn Water's rates and charges of payment provided for in the contracts described in (7) and (15) above, including any rate or charge, or part thereof, relating to electric energy, power, capacity, frequency control, phase, cycle, special facilities, transmission service, power factor cooperation, or reactive energy, are subject to the jurisdiction of this Commission under Section 20, irrespective of finding (21) above.

(24) For the purpose of determining whether Penn Water's rates or charges to Baltimore Company, Metropolitan Company, Philadelphia Company and PP&L are and will be excessive, unjust or unreasonable, such rates or charges may properly be tested by determining whether the net operating income of Penn Water produced by such rates or charges constitutes a fair return on a proper rate base, and the respective amounts shown by the record in this proceeding for the year 1946 may properly be used for that purpose.

(25) The actual legitimate investment in Penn Water's and Transmission Company's electric plant used and useful was \$33,113,148 as of December 31, 1946, for the purposes referred to in (24) above. For the purpose of determining a proper rate base for Penn Water and Transmission Company for the year 1946, it is fair and reasonable to use that year's average actual legitimate investment in electric plant used and useful, which was \$33,126,585. For each of

the periods hereinafter specified in (35) below, it is fair and reasonable to use the foregoing amount of \$33,113,148, plus the recorded cost of additions less recorded retirements, as the actual legitimate investment in electric plant used and useful at the beginning of such period, if no substantial property addition is put into service during such period.

(26) The accrued depreciation as of December 31, 1946, was \$9,240,628, the amount recorded in the books of Penn Water and Transmission Company as of that date, after proper adjustments. For the purpose of determining a proper rate base for Penn Water for the year 1946, it is fair and reasonable to use as accrued depreciation the average amount for that year which is \$9,001,873. For each of the periods specified in (35) below, it is fair and reasonable to use the amount of \$9,240,628, as of December 31, 1946, plus or minus the changes recorded on Penn Water's and Transmission Company's books between that date and the date hereof in conformity with the method followed by Penn Water and Transmission Company in 1946, and plus or minus the changes recorded on Penn Water's and Transmission Company's books between the date hereof and the periods referred to in (35) below, in conformity with (27) and (28) below.

(27) The service lives as shown in Exhibit 59 are proper and reasonable for the computation of Penn Water's and Transmission Company's annual depreciation allowance.

(28) The straight-line method of depreciation is the proper and adequate depreciation method for the purposes of computing Penn Water's bills for power and energy in accordance with the Commission's order in this case and for the purpose of accruing depreciation on its books.

(29) The proper and reasonable working capital allowance for the purpose of determining a proper rate base for Penn Water and Transmission Company, for the year 1946,

*Exhibit A to Petition for Review*

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is not more than \$650,000, representing the average amount of materials and supplies plus one-eighth of cash operating expenses for the year, not including taxes and purchased power. For each of the periods hereinafter specified in (35) below, it is fair and reasonable similarly to compute the working capital allowance upon the book, recorded amounts for the immediately preceding 12 months' period.

(30) The proper rate base for the year 1946 for the purposes of determining just and reasonable rates and charges to Metropolitan Company, Philadelphia Company, PP&L and Baltimore Company is not more than \$24,774,712, as shown by the following tabulation:

Average Gross Investment for 1946	\$33,126,585
Less: Average Reserve for Depreciation for 1946	9,001,873
Average Net Investment for 1946	24,124,712
Working Capital Allowance	650,000
Net Investment Rate Base	<u><u>\$24,774,712</u></u>

and the rate base so computed reflects the actual legitimate net investment in Penn Water's and Transmission Company's electric plant in service as an assembled whole and an established plant in successful operation:

(31) A fair and reasonable annual rate of return to Penn Water and Transmission Company is  $5\frac{1}{4}\%$ ; the fair return for 1946 is \$1,300,672 on a rate base of \$24,774,712.

(32) Penn Water's and Transmission Company's net operating income, for 1946, exceeded a fair return by not less than \$2,176,736.

(33) On the basis of a reasonable and proper allocation of the cost of service rendered by Penn Water and Transmission Company to Baltimore Company, the rates

and charges to Baltimore Company for 1946 are unjust and unreasonable by approximately \$1,733,318.

(34) For the year 1946, on the basis of a reasonable and proper allocation, Penn Water's rates and charges to Philadelphia Company exceed the cost of service to that company by approximately \$114,311; its rates and charges to Metropolitan Company exceed the cost of service to that company by approximately \$26,094; and its rates and charges to PP&L exceed the cost of service to that company by approximately \$80,538.

In the test year 1946, Penn Water received revenues amounting to \$1,483,798 from the sale to the Pennsylvania Railroad (in Pa.). The proper allocation of Penn Water's and Transmission Company's total cost of service among Penn Water's customers results in the assignment of \$1,261,323 thereof to serving the Pennsylvania Railroad (in Pa.). Accordingly, Penn Water's revenues from that service to Pennsylvania Railroad exceeded the cost of service for the test year 1946 by \$222,475, which amount is subject to an adjustment for income taxes.

(35) Except as referred to in (38) below, a proper rate base for the purpose of determining the rates and charges to Baltimore Company for each six months' period following each June 30 and December 31, after issuance hereof, is one computed by adding to the gross investment of \$33,113,148 (as of December 31, 1946), as referred to in (25) above, the cost of net additions to electric plant in service from the latter date to said June 30 or December 31; by deducting from the total thus determined the amount of the depreciation reserve as of said June 30 or December 31, according to Penn Water's and Transmission Company's books, adjusted as referred to in (26), (27) and (28) above; and adding working capital computed as referred to in (29) above.

(36) The application of a  $5\frac{1}{4}\%$  per annum rate of return to the rate base determined as referred to in (35)



above, will provide a fair return to Penn Water and Transmission Company.

(37) Penn Water's rates and charges to Baltimore Company will be just and reasonable when the power bill to Baltimore Company is computed by adding to the fair return, referred to in (36) above, all reasonable and necessary operating expenses and depreciation expenses, calculated as referred to in (27) and (28) above, and by deducting the Conowingo backwater payment, and all electric revenues received from others, including Metropolitan Company, Philadelphia Company, PP&L and Railroad. *Provided*, however, that the deduction in respect to revenues from Pennsylvania Railroad shall be only the amount calculated at rates which would have yielded \$1,261,323, based on volumes and demands for the test year 1946 and, *Provided*, further, that income taxes associated with revenues from the Railroad in excess of such deduction shall not be included in the costs to be reimbursed by Baltimore Company.

(38) If a substantial addition to property is put in service between the dates for determination of the rate base referred to in (35) above, Penn Water may petition the Commission to include the cost thereof in the rate base from the date of its commercial operation.

The Commission orders that:

(A) Penn Water's and Transmission's Company's motion to dismiss for want of jurisdiction be and the same hereby is denied.

(B) The petition of Intervenor, Public Service Commission of Maryland, to reopen the record for the purpose of receiving certain additional evidence be and the same hereby is denied.

(C) Within 45 days after the date of issuance of this order, Penn Water shall file, in a form satisfactory to the Commission, new schedules of rates and charges for or in connection with its transmission

*Exhibit A to Petition for Review*

and sale of electric energy in interstate commerce for resale to Metropolitan Company, Philadelphia Company and PP&L. The new schedules of rates and charges shall be effective on and after February 1, 1949, and shall effect a reduction, based upon Penn Water's and Transmission Company's operations during the test year 1946, of \$26,094 to Metropolitan Company, \$114,311 to Philadelphia Company and \$80,538 to PP&L.

(D) Within 45 days after the issuance of this order Penn Water shall file in a form satisfactory to the Commission, a new schedule of rates and charges for or in connection with its transmission and sale of electric energy in interstate commerce for resale to Baltimore Company. Said schedule of rates and charges shall be such as, together with the Conowingo backwater payment, the revenues from the sales referred to in (C), above, and a credit for service to the Pennsylvania Railroad computed as set forth in (37), above, will provide a  $5\frac{1}{4}\%$  return to Penn Water and Transmission Company, after operating expenses and depreciation charges, all as set forth in (37), above, on a rate base to be computed in the manner set forth in (G), below, and shall be effective on and after February 1, 1949.

(E) The Commission reserves the right to reject all or any part of the schedules of rates and charges referred to in Paragraphs (C) and (D) hereof and in lieu thereof to prescribe by further order the appropriate rates, charges, classifications, rules, regulations, practices, or contracts.

(F) Penn Water and Transmission Company shall compute annual depreciation expense beginning February 1, 1949, in accordance with the straight-line depreciation method for the purpose of computing its bills for energy and power, using in

*Exhibit A to Petition for Review*

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connection therewith the service lives which are set forth in Exhibit 59.

- (G) For the purpose of determining the rates and charges to Baltimore Company, Penn Water and Transmission Company shall compute a rate base as of June 30, 1949, and as of each December 31 and June 30 thereafter in the manner set forth in findings (25) through (30), and (35), by adding to the amount of actual legitimate investment as of December 31, 1946, as found in (25), above, the net claimed cost, to the date of computation, of additions and retirements in its electric plant used and useful; deducting from this amount the depreciation reserve as of that date according to the companies' books in conformity with (F), above; and adding working capital computed for the period in question in the manner set forth in finding (29) above.
- (H) The rate base computed as set forth in (G), above, shall remain unchanged for the six months period beginning with the date as of which it is computed, provided, however, that in the case of substantial addition to property which is put in service between the dates for determination of the rate base, Penn Water and Transmission Company may petition the Commission to include the cost thereof in the rate base from the date of commercial operation.
- (I) Penn Water and Transmission Company shall file on or before May 1, 1949, a statement showing the computation of the rate base referred to in (D) hereof as of December 31, 1948, and thereafter on or before each May 1, for the preceding calendar year, a statement showing the computation of such rate base in accordance with this order, the operating expenses, depreciation, taxes, and

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return, and the resulting charges to Baltimore Company under said revised rate schedule.

By the Commission. Commissioner Draper concurring in the result only.

Leon M. Fuquay,  
Secretary.

Date of Issuance: January 5, 1949.



**EXHIBIT B.**

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**FPC ELECTRIC TARIFF  
ORIGINAL VOLUME NO. 1****OF****PENNSYLVANIA WATER & POWER COMPANY****issued on behalf of itself and****SAFE HARBOR WATER POWER CORPORATION****and****CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY  
OF BALTIMORE.****(Filed May 31, 1949)**

---

Issued to comply with Order of Federal Power Commission,  
Docket No. IT-5915, issued January 5, 1949,  
as modified by order issued January 31, 1949.

Communications Covering Rates Should be Addressed to:

G. W. Spaulding, Executive Vice-President,  
Pennsylvania Water & Power Company,  
Lexington Building,  
Baltimore, Maryland.

Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

Original Sheet No. 1

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Issued by:

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland

Issued on: May 27, 1949.

Effective:

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

*Exhibit B to Petition for Review*

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Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

Original Sheet No. 2

**PRELIMINARY STATEMENT**

This tariff is filed under protest by Pennsylvania Water & Power Company in compliance with an order of the Federal Power Commission, in its Docket No. IT-5915, issued January 5, 1949, the effective date of which was stayed until April 29, 1949, by the Commission's order issued January 31, 1949, in the same Docket. It is filed by Pennsylvania Water & Power Company on behalf of itself with respect to Rate Schedules A, B, C and D; on behalf of itself and Safe Harbor Water Power Corporation with respect to Rate Schedules A, B, and D; and, on behalf of Consolidated Gas Electric Light & Power Company of Baltimore with respect to Rate Schedule E. It is effective and applicable to the joint services rendered by Safe Harbor Water Power Corporation and the issuing company, and to the services rendered by Consolidated Gas Electric Light and Power Company to Pennsylvania Water & Power Company only in the event appropriate concurrences to the above specified rate schedules are filed by such companies.

By order of the United States Court of Appeals for the District of Columbia Circuit, filed April 29, 1949 (Case No. 10236, April Term, 1949), the effectiveness of the rate schedules required to be filed by the Commission's order of January 5, 1949, were stayed and suspended pending final disposition of proceedings to review the Commission's orders and actions in its Docket No. IT-5915. In the event that the Commission's order of January 5, 1949, is modified or set aside in whole or in part in the aforementioned review proceedings, this tariff shall be null and void and of no effect.

Issued by:

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland

Issued on: May 27, 1949.

Effective:

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

Original Sheet No. 3

Neither the filing of this tariff, nor the inclusion herein of any particular rates, charges, or classifications for any service, are to be construed as a voluntary initiation of any rate, charge, or classification for any transmission or sale of electric energy, or as an admission by the issuing company that the Commission has any jurisdiction or statutory authority to regulate, control, determine, or fix any of such rates, charges, or classifications, or any of the rules, regulations, practices, or contracts affecting such rates, charges, or classifications.

Pennsylvania Water & Power Company generates hydroelectric and steam-electric power, energy, and other electric services at its plant at Holtwood, Pennsylvania. It also owns and operates certain distribution facilities and a number of electric transmission lines in Pennsylvania connecting its plant at Holtwood and the hydroelectric plant of Safe Harbor Water Power Corporation, an affiliate, at Safe Harbor, Pennsylvania, with electric utility distribution companies in Pennsylvania and with the Pennsylvania Railroad Company in Pennsylvania. Susquehanna Transmission Company of Maryland, a wholly owned subsidiary of Pennsylvania Water & Power Company, owns transmission and distribution facilities within Maryland. Certain of the transmission lines of Susquehanna Transmission Company of Maryland connect certain of the transmission lines of Pennsylvania Water & Power Company, at the Maryland-Pennsylvania state line, with electric utility distribution companies in Maryland and the District of Columbia, and with the Pennsylvania Railroad Company in Maryland.

Issued by:

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland

Issued on: May 27, 1949.

Effective:

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).



*Exhibit B to Petition for Review*

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Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

Original Sheet No. 4

Electric energy, capacity, and other services rendered under this tariff are rendered jointly by Pennsylvania Water & Power Company and Safe Harbor Water Power Corporation to such customers as are so indicated herein. Such electric energy service as may be rendered by Consolidated Gas Electric Light & Power Company of Baltimore to Pennsylvania Water & Power Company under this tariff is the subject of a rate schedule herein for Backfeed Service solely by reason of the requirements under the Commission's order of January 5, 1949, and would not otherwise be included in this tariff, but would be contained in a separate tariff filed by Consolidated Gas Electric Light & Power Company of Baltimore. Such Backfeed Service to Pennsylvania Water & Power Company is the only service of Consolidated Gas Electric Light & Power Company of Baltimore included in this tariff.

Services by Pennsylvania Water & Power Company and Safe Harbor Water Power Corporation, under this tariff, are rendered solely to electric utility distribution companies for use by such customers in distribution to their ultimate consumers. Services rendered to the Pennsylvania Railroad Company are not subject to any of the provisions of this tariff. It is the policy and practice of Pennsylvania Water & Power Company and Safe Harbor Water Power Corporation to hold themselves out to serve such electric utility distribution companies and such other customers who have entered or who may in the future enter into valid and lawful service contracts with them.

Issued by:

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland

Issued on: May 27, 1949.

Effective:

Not effective under stay order of  
U. S. C/A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

Original Sheet No. 5

The provisions of this tariff supersede only the rate provisions and adjustments thereof of service contracts or arrangements with customers of Pennsylvania Water & Power Company and Safe Harbor Water Power Corporation existing as of the effective date of this tariff. The rate provisions of this tariff are applicable to no interchange services other than the Backfeed Services of Consolidated Gas Electric Light & Power Company. The filing of this tariff is without prejudice to the contentions of Pennsylvania Water & Power Company with respect to the non-existence or invalidity of any purported contracts between Pennsylvania Water & Power Company and Consolidated Gas Electric Light & Power Company of Baltimore, and between Pennsylvania Water & Power Company, Safe Harbor Water Power Corporation, and Consolidated Gas Electric Light & Power Company of Baltimore.

Issued by:

G. W. Spaulding, Executive Vice-President  
Pennsylvania Water & Power Company  
Baltimore, Maryland  
Issued on: May 27, 1949.

Effective:

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

*Exhibit B to Petition for Review*

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Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

Original Sheet No. 6

**RATE SCHEDULE A, Pennsylvania Power &  
Light Company.**

*Availability*

Service is available to Pennsylvania Power & Light Company, under this rate schedule from Pennsylvania Water & Power Company and Safe Harbor Water Power Corporation to the extent that there is available to them for joint service the electric resources of energy, capacity, and other services from their hydroelectric and steam-electric plants at Holtwood and Safe Harbor, and from such electric interchange services obtained by them from Pennsylvania Power & Light Company and others.

*Applicability and Character of Service*

The application of this rate schedule and the character and terms and conditions of the service are as set forth in the service contract between Pennsylvania Water & Power Company, Safe Harbor Water Power Corporation, and Pennsylvania Power & Light Company, dated May 1, 1933, as amended by letter agreement dated April 28, 1939, as supplemented by letter dated February 19, 1946; and as set forth in the service contract between Pennsylvania Water & Power Company and Edison Electric Company of Lancaster, Pa., dated October 9, 1912, as amended under date of October 19, 1923, to the extent that the provisions thereof were continued in effect by the foregoing service contract between Pennsylvania Water & Power Company, Safe Harbor Water Power Corporation, and Pennsylvania Power & Light Company.

*Issued by:*

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland

Issued on: May 27, 1949.

*Effective:*

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

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### *Rates*

The rates for service under this rate schedule are as follows:

#### Demand Charge:

\$1.38 per month per kilowatt of Billing Demand.

#### Energy Charge:

2.5 mills per kilowatthour for all energy except 4,000 volt service at Holtwood.

6.0 mills per kilowatthour for 4,000 volt service at Holtwood.

#### Reactive Charge:

0.2 mills per lagging reactive kilovolt-ampere-hour for all such kilovolt-ampere-hours supplied per month numerically in excess of 50% of the kilowatt hours of energy supplied under this rate schedule in that month.

#### Special Facilities Charge:

\$965.00 per month.

The Billing Demand in any month shall be an amount equal to the maximum power requirement of the services specified in the existing service contract (excluding Excess Energy under Article IV of the contract dated May 1, 1933 and excluding interchange service), measured on a clock one-hour integrated basis in units of 1,000 kilowatts (1,000 kwh. per hour) during that month or the preceding eleven months. The 4,000 volt service at Holtwood is excluded in the determination of the Billing Demand.

Issued by:

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland

Issued on: May 27, 1949.

Effective:

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).



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Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

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**RATE SCHEDULE B, Philadelphia Electric Company***Availability*

Service is available to Philadelphia Electric Company, under this rate schedule, from Pennsylvania Water & Power Company and Safe Harbor Water Power Corporation to the extent that there is available to them for joint service the electric resources of energy, capacity, and other services from their hydroelectric and steam-electric plants at Holtwood and Safe Harbor, and from such electric interchange services obtained by them from Philadelphia Electric Company and others.

*Applicability and Character of Service*

The application of this rate schedule and the character and terms and conditions of the service are as set forth in the service contract between Pennsylvania Water & Power Company, Safe Harbor Water Power Corporation, and Philadelphia Electric Company, dated August 1, 1933, as supplemented by agreement dated December 13, 1938; and by letters between the parties dated August 5, 1947 and August 19, 1947.

*Rates*

The rates for service under this rate schedule are as follows:

**Demand Charge:**

**\$1.38 per month per kilowatt of Billing Demand.**

**Issued by:**

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland

Issued on: May 27, 1949.

**Effective:**

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

Pennsylvania Water & Power Company  
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**Energy Charge:**

2.5 mills per kilowatthour.

**Reactive Charge:**

0.2 mills per lagging reactive kilovolt-ampere-hour for all such kilovolt-ampere-hours supplied per month numerically in excess of 50% of the kilowatt hours of energy supplied under this rate schedule in that month.

**Special Facilities Charge:**

\$6,559.00 per month.

The Billing Demand in any month shall be an amount equal to the maximum power requirement of the services specified in the existing service contract (excluding emergency supply under Article II, Section 2 of the contract dated August 1, 1933), measured on a clock one-hour integrated basis in units of 1,000 kilowatts (1,000 kwh. per hour) during that month or the preceding eleven months.

Issued by:

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland

Issued on: May 27, 1949.

Effective:

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

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Pennsylvania Water & Power Company  
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**RATE SCHEDULE C, Metropolitan Edison Company*****Availability***

Service is available to Metropolitan Edison Company, under this rate schedule, from Pennsylvania Water & Power Company in accordance with the provisions of Article IV of the service contract between Pennsylvania Water & Power Company and Metropolitan Edison Company, dated November 15, 1945, as supplemented by letter dated November 24, 1948.

***Applicability and Character of Service***

The application of this rate schedule and the character and terms and conditions of the service are as set forth in such service contract dated November 15, 1945.

***Rates***

The rates for service under this rate schedule are as follows:

**Demand Charge:**

\$1.38 per month per kilowatt of specified firm power.

\$0.40 per 1,000 kilowatts of spinning reserve capacity for each clock hour in which such capacity is provided.

**Energy Charge:**

- (a) 3.5 mills per kilowatt hour for energy supplied in any month in the portion of the customer's total requirements above its steam line.
- (b) 2.75 mills per kilowatt hour for energy supplied in any month, between the hours of 7 a. m. and 9 p. m.

**Issued by:**

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland  
Issued on: May 27, 1949.

**Effective:**

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

Eastern Standard Time, or Daylight Saving Time when in effect, on all days except Sundays and Holidays in the customer's specified area, in excess of energy billed under Section (a) above.

- (c) 2.0 mills per kilowatt hour for all additional energy supplied in any month in excess of energy billed under Sections (a) and (b) above.

**Reactive Charge:**

0.2 mills per lagging reactive kilovolt-ampere-hour for all such kilovolt-ampere-hours supplied per month numerically in excess of 50% of the kilowatt hours of energy supplied under this rate schedule plus kilowatt hours use of spinning reserve capacity in that month.

**Special Facilities Charge:**

**\$2,751.00 per month.**

**Issued by:**

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland  
Issued on: May 27, 1949.

**Effective:**

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).



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Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

Original Sheet No. 12

**RATE SCHEDULE D, Consolidated Gas Electric Light &  
Power Company of Baltimore**

*Availability*

Service is available to Consolidated Gas Electric Light & Power Company of Baltimore under this rate schedule from Pennsylvania Water & Power Company in coordination with joint service from Safe Harbor Water Power Corporation.

Service to such customer is available only to the extent that there is electric capacity and energy available to Pennsylvania Water & Power Company at its hydroelectric and steam-electric generating plants, and from the hydroelectric plant of Safe Harbor Water Power Corporation to which Pennsylvania Water & Power Company may be entitled, and not otherwise disposed of in performance of now existing contracts or arrangements, new contracts or arrangements, or obligations to serve imposed by charter or otherwise by law.

*Applicability and Character of Service*

The application of this rate schedule and the character and terms and conditions of service are as were set forth in a purported contract between Pennsylvania Water & Power Company and Consolidated Gas Electric Light & Power Company of Baltimore, dated December 31, 1927, as amended December 27, 1928, June 1, 1931, and September 29, 1939; and as were set forth in a purported contract between Pennsylvania Water & Power Company, Safe Harbor Water Power Corporation, and Consolidated Gas Electric Light & Power Company of Baltimore,

Issued by:

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland

Issued on: May 27, 1949.

Effective:

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

dated June 1, 1931, as amended August 1, 1932, and November 22, 1939; without prejudice to the position of Pennsylvania Water & Power Company that such contracts, as amended, are unlawful, void, and non-existent. In the event that either or both of such contracts, as amended, or any part thereof are determined by any court to be unlawful, void, or non-existent this rate schedule shall cease to be effective.

### *Rates*

The annual charge for all services and facilities under this rate schedule, without regard to the amount of energy, capacity, or other services or facilities actually furnished, shall be computed in accordance with the following formula:

(A) Add the following items:

- (1) An amount equal to the return allowed, computed in accordance with paragraphs (35) and (36) of the findings contained in the order of the Federal Power Commission, issued January 5, 1949, in its Docket No. IT-5915.
- (2) An amount equal to all operating expenses, taxes (other than Federal and State taxes in respect to income), and depreciation expense (depreciation calculated in accordance with paragraphs (27) and (28) of such findings in such order).

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Issued by:  
G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland  
Issued on: May 27, 1949.

Effective:  
Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

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Pennsylvania Water & Power Company  
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- (3) An amount equal to all payments by Pennsylvania Water & Power Company for energy, capacity or other electric services purchased from Safe Harbor Water Power Corporation, Consolidated Gas Electric Light & Power Company of Baltimore, and others.
- (4)-(a) An amount determined by applying the then current rates of Federal and State taxes in respect to income to the amount equal to the return allowed under paragraph (1)

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G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland  
Issued on: May 27, 1949.

Effective:  
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U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

Pennsylvania Water & Power Company  
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after adjustment of such amount of return for interest deductions on account of outstanding debt, amortization charges or credits on such debt and any credits for dividends paid as are allowable under the then current tax laws.

(b) Any tax incurred in respect to the amounts determined in paragraph (4)-(a) above and in this paragraph.

(B) Deduct the following items from the sum of items in paragraph (A) above:

(1) An amount equal to the Conowingo backwater payment.

(2) An amount equal to all electric revenues received from others, including Metropolitan Edison Company, Philadelphia Electric Company, Pennsylvania Power & Light Company, but excluding any revenues received from the Pennsylvania Railroad Company.

(3) An amount, to the extent Pennsylvania Water & Power Company receives any revenue from the Pennsylvania Railroad, computed as the sum of;

(a) 2.43 mills per kilowatt hour times the portion of the annual energy supplied in Pennsylvania to the Pennsylvania Railroad, under a contract dated September 2,



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Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

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(Continued)

1931, as amended by agreements dated August 15, 1934 and June 22, 1938, between The Pennsylvania Railroad Company, the issuing company, Safe Harbor Water Power Corporation and others.

- (b) \$16.61 per kilowatt per year times the portion of the total billing demand of the Pennsylvania Railroad supply under the contract referred to in paragraph (a), which portion of the demand is to be the annual maximum among the products for each month of the year of the monthly billing demand and the ratio for that month of the energy supplied to the Pennsylvania Railroad in Pennsylvania to the total energy supplied to the Pennsylvania Railroad under such contracts.
- (c) An annual amount of \$109,289.

Issued by:

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland  
Issued on: May 27, 1949.

Effective:

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U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10235, April  
Term, 1949).



Pennsylvania Water & Power Company  
FPC Electric Tariff, Original Volume No. 1

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- (C) The net sum of the above amounts to be paid annually by Consolidated Gas Electric Light & Power Company of Baltimore to Pennsylvania Water & Power Company shall be estimated by Pennsylvania Water & Power Company in advance, and shall be paid as nearly as possible in equal monthly installments, the payment for any month to be made not later than the fifteenth day of the next succeeding month, with subsequent adjustment to the correct yearly payment.

Issued by:

G. W. Spaulding, Executive Vice-Pres.  
Pennsylvania Water & Power Company  
Baltimore, Maryland  
Issued on: May 27, 1949.

Effective:

Not effective under stay order of  
U. S. C. A. for D. C. Circuit, dated  
April 29, 1949 (No. 10236, April  
Term, 1949).

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Original Sheet No. 16

**RATE SCHEDULE E, Backfeed Service***Availability*

Upon request of Pennsylvania Water & Power Company, Backfeed Service is available to it under this rate schedule from Consolidated Gas Electric Light & Power Company of Baltimore up to the limit of the latter's available generating capacity in excess of the requirements of Consolidated Gas Electric Light & Power Company provided, however, that Consolidated Gas Electric Light & Power Company is not obligated to start up a station which would not otherwise be operated.

*Applicability and Character of Service*

Backfeed Service consists of the furnishing of electric energy by Consolidated Gas Electric Light & Power Company of Baltimore to Pennsylvania Water & Power Company, upon request of the latter. The amount of such service shall be measured by the net hourly infeed from the system of Consolidated Gas Electric Light & Power Company of Baltimore to the Highlandtown Substation and the net hourly infeed at Safe Harbor on the Westport and Riverside Circuits.

*Rates*

The rate for Backfeed Service is 10.67 mills per kilowatt hour.

Issued by:

G. W. Spaulding, Executive Vice-Pres.

Pennsylvania Water &amp; Power Company

Baltimore, Maryland

Issued on: May 27, 1949.

Effective:

Not effective under stay order of

U. S. C. A. for D. C. Circuit, dated

April 29, 1949 (No. 10236, April

Term, 1949).

**EXHIBIT C.****UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION**

Before Nelson Lee Smith, Chairman; Thomas C.  
Commissioners: Buchanan, Claude L. Draper and Har-  
rington Wimberly.

October 25, 1949

In the Matter of } Docket No.  
Pennsylvania Water & Power Company } IT-5915

**ORDER REJECTING PROPOSED "FPC ELECTRIC  
TARIFF" AND PRESCRIBING RATE  
SCHEDULES**

On May 31, 1949, Pennsylvania Water & Power Com-  
pany (Penn Water) in purported compliance with the re-  
quirements of Paragraphs (C) and (D) of the Commis-  
sion's order issued January 5, 1949,<sup>1</sup> filed "FPC Electric  
Tariff, Original Volume No. 1"<sup>2</sup> consisting of a Prelim-

1. Paragraphs (C) and (D) require Penn Water to file, in a form satis-  
factory to the Commission, new schedules of rates and charges for or in con-  
nection with Penn Water's transmission and sale of electric energy in interstate  
commerce for resale to Pennsylvania Power and Light Company, Metropolitan  
Edison Company, Philadelphia Electric Company, and Consolidated Gas Elec-  
tric Light and Power Company of Baltimore. These schedules were to be  
effective on and after February 1, 1949. On April 22, 1949, Penn Water and  
its wholly-owned subsidiary, Susquehanna Transmission Company of Mary-  
land, filed a Petition for Review in the United States Court of Appeals for the  
District of Columbia Circuit (No. 10236) of the Commission's order, among  
others, issued January 5, 1949. At the same time they filed a Motion for Stay  
of the requirements of that order. On April 29, 1949, the Court stayed "the  
effectiveness of paragraphs (C) and (D) \* \* \*, insofar as they provide that the  
rate schedules shall be effective on and after February 1, 1949, \* \* \* pending  
conclusion of the review proceedings". The Court, however, refused to stay the  
requirement that the rate schedules be filed. Pursuant to oral stipulation the  
filing date was extended to May 31, 1949.

2. Penn Water's designation is not altogether proper since the proposed  
filing does not in all respects follow the form of a "tariff" as that term is com-  
monly used and understood. For example, Penn Water's proposed "tariff"  
contains neither a statement of General Terms and Conditions nor Form of  
Service Contract.



inary Statement and four rate schedules designated Rate Schedules "A" to "D", inclusive, for service to Pennsylvania Power and Light Company (PP&L), Philadelphia Electric Company (Philadelphia Company), Metropolitan Edison Company (Metropolitan Company) and Consolidated Gas Electric Light and Power Company of Baltimore (Baltimore Company), respectively, and Rate Schedule "E" for service by Baltimore Company to Penn Water.

Upon receipt of that filing, in accordance with the Commission's usual practice, copies thereof were served on interested parties (here the customer companies named above, the Maryland Public Service Commission, the Pennsylvania Public Utility Commission and the City of Baltimore) and their comments or suggestions invited. All responded.

PP&L, Metropolitan Company and Philadelphia Company, stated they had no comments or suggestions to offer, the former two companies qualifying their replies as being "without prejudice" to their legal rights in the premises. The Pennsylvania Commission objected to the filing on the ground that it presupposed "jurisdiction over the rates and charges of" Penn Water and declined to comment on the "form or contents of the tariff itself". The Maryland Commission, the City of Baltimore and Baltimore Company urged rejection of the proposed filing as in violation of the Commission's opinions and orders in this case and urged the Commission to prescribe proper rate schedules pursuant to Paragraph (E) of the order issued January 5, whereby the Commission reserved the right to reject all or any part of the schedules of rates and charges filed by Penn Water and in lieu thereof to prescribe by further order the appropriate rates, charges, classifications, rules, regulations, practices or contracts.

Consideration of Penn Water's "FPC Electric Tariff" impels the conclusion that in many respects it fails to comply with the Commission's opinions and orders in this case; that it should be rejected; and that proper rate schedules should be prescribed by the Commission.

On the basis of the record in this case, the Commission found in Opinion No. 173 and accompanying order issued January 5, 1949 that Penn Water *alone* sells firm power and energy in interstate commerce to PP&L, Metropolitan Company, Philadelphia Company, and Baltimore Company. Consistently with such finding, the Commission ordered Penn Water (alone) to file the rate schedules for such sales. The Commission thereby expressly rejected Penn Water's contention that the rates involved are "joint" and stated " \* \* \* the record is replete with evidence, much of it supplied by Penn Water, which shows this 'joint rate' contention to be wholly without substance."

But the "tariff" which Penn Water has submitted states that it is filed "on behalf of" Penn Water and Safe Harbor Water Power Corporation (Safe Harbor) with respect to the rate schedules for service to PP&L, Philadelphia Company, and Baltimore Company and is "effective and applicable to the joint services rendered by" them "only in the event appropriate concurrences" to such rate schedules are filed by Safe Harbor.

Thus, Penn Water disregards the Commission's order that Penn Water (not Penn Water jointly with someone else not a party to the proceeding) file schedules of its rates for services the Commission has determined Penn Water alone renders, by filing, as one of purported joint sellers, schedules of joint rates for joint services. This is neither a sole filing nor a joint filing. It expressly announces it is not a sole filing. And as a purported joint filing it is ineffective because it is not joined in by both of the parties purportedly jointly rendering the services, but is expressly contingent on concurrences which have not been received.

This failure to comply with the terms of the Commission's order can scarcely be explained as resulting from a misunderstanding of the Commission's findings and orders in this case. Reference need be made only to the Petition for Review filed April 22, 1949, by Penn Water and Susquehanna Transmission Company of Maryland in



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the Court of Appeals for the District of Columbia Circuit and their allegations of error therein,<sup>3</sup> predicated on the very fact that the Commission had found the rates and services were not joint and had made its order applicable to Penn Water, alone.

Nor is Penn Water's violation excused by any necessity for protecting its position on review, that protection being fully afforded by the Court's stay order of April 29, 1949, which stayed the effectiveness of the rate schedules but left in force the requirement that they be filed *as ordered by the Commission*.

The schedules filed by Penn Water for service to PP&L and Philadelphia Company also violate the order of January 5, in that they provide for service only to "the extent that there is available", capacity, energy and other services. By so limiting the availability of service under these rate schedules "the present arrangements whereby sales to Pennsylvania customers are made on a firm basis" would be materially altered, contrary to the Commission's order which required that the obligation of Penn Water to these

3. Penn Water's Petition for Review alleges:

"(2) The services rendered by Penn Water to PP&L, Philadelphia Company, Railroad Company, and Baltimore Company are rendered jointly with others not made Respondents to these proceedings, and the rates, charges, and classifications therefor are joint; there is no substantial evidence of record to the contrary; and the said Commission Orders were issued without notice or opportunity for hearing to Safe Harbor jointly obligated to and jointly serving the foregoing customers, contrary to the provisions of Section 206(a) of the Act and the due process clause of the Fifth Amendment to the Constitution of the United States.

"(3) *The said Commission Order of January 5, 1949, requires Penn Water alone to file new schedules of rates and charges for services to PP&L and Philadelphia Company without requiring Safe Harbor to join or concur in the filing of such schedules*, without authority under the Federal Power Act; thereby requiring Penn Water to assume the entire obligations to such customers instead of the joint obligation which exists to the impairment of its ability to render adequate service to its customers within the meaning of Section 207 of the Act (16 U. S. C. 1946 ed. § 841f; 49 Stat. 853); and there is no substantial evidence of record to the contrary.

"(4) Insofar as the said Commission Order of January 5, 1949, undertakes to require a reduction in the revenues of Penn Water alone it constitutes regulation by the Commission of the divisions of revenue received by Penn Water for its participation in the rendering of joint services to each of its customers except Metropolitan Company, without jurisdiction, authority, or power in the Commission to regulate divisions of rates or charges for joint services under the Federal Power Act." (Emphasis supplied)

customers for firm supply of energy at the rates required by the Commission's rate reduction be continued in effect.

As for the rate schedule for service to Baltimore Company, it is not in accord with the requirements of the opinion and order because it fails to provide for a credit to Baltimore Company in the net amount of \$141,777, which amount resulted from the reallocation of revenues (between Penn Water and Baltimore Company) received by Penn Water from the Pennsylvania Railroad for special facilities, which, we found, were in fact provided, in whole or in part, by Baltimore Company. The allocation of costs of service for special facilities, the excess revenues from sales by Penn Water to its customers, and the rate reductions ordered by the Commission are predicated on this credit to Baltimore Company of \$141,777, as the opinion clearly states.

Penn Water's treatment of the \$141,777 in its rate filing is paralleled in its segregation of excess revenues under the stay orders. The statements submitted by Penn Water to the Commission pursuant to the requirements of the Commission's temporary stay order, reporting on its earmarking and segregation of the difference between the payments received under existing rates or arrangements and those which would be required under the Commission's order issued January 5, 1949, show that Penn Water has not given effect to this adjustment of revenues in complying with the stay order. As a result of improper computations, the proper amounts have not been segregated in the required reserve. The order herein, accordingly, requires Penn Water to compute the amounts correctly and to adjust its reserve for the period covered by the Commission's stay order issued January 31, 1949.

The schedule for service to the Baltimore Company contains a further violation of the Commission's order issued January 5, 1949, since Paragraph A (2) of the rate schedule provides for a charge to Baltimore Company of an "Amount equal to all operating expenses" whereas find-

ing (37) of said order limits the charges to "reasonable and necessary operating expenses".

Although the Commission's opinions and orders will be searched in vain for any finding or order justifying or requiring a rate schedule to be filed by Penn Water, or Baltimore Company, for the supply of electric energy by Baltimore Company to Penn Water, Penn Water has purported to file rate schedule "E" as part of its tariff, "on behalf of" Baltimore Company. This filing is by its own terms ineffective, for it provides that it is to be "effective and applicable" only "in the event appropriate" concurrence is filed by Baltimore Company. Baltimore Company has protested the issuance of rate schedule "E" as a violation of its existing contractual arrangements with Penn Water, advising that it had no advance notice thereof and has not consented thereto. Thus Penn Water has attempted to file with the Commission a rate schedule which is not its own, for a service it does not render, in a "tariff" containing a number of rate schedules filed by Penn Water in purported compliance with the Commission's order.

Under the presently existing service arrangements and pool operations, Baltimore Company's energy is used by Penn Water to meet its firm power obligations in Pennsylvania. Furthermore, the existing mode of operation permits energy requirements to be supplied from the most economical sources. Such operations require Baltimore Company to generate energy in its steam electric plants for transmission to Pennsylvania.<sup>4</sup> No billing is made for this supply of energy by Baltimore Company because under the contractual arrangement in effect and the Commission's opinions and orders in this case, Penn Water's expenses for energy purchased are passed on to Baltimore Company. No rate is, therefore, necessary for the supply of Baltimore Company's energy. The Commission has explicitly taken "care to leave the continuation of (this)

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4. This supply was referred to by Penn Water throughout the hearings in this case as "backfeed" in a transparent attempt to belittle the importance of the energy flows from Maryland to Pennsylvania.

operation of the integrated and interconnected system in full effect, " . . . "

Penn Water's filing, in this respect, appears to be part of its effort to disrupt the presently coordinated operations of the pool,<sup>5</sup> and certainly not an effort to comply with the Commission's decision. Under rate schedule "E", the energy supplied by Baltimore Company is to be delivered only *upon request* of Penn Water. That means that Penn Water can refuse to receive any supply from Baltimore Company. As we stated in Opinion No. 173-A, "Penn Water's non-receipt of steam-generated energy from outside Pennsylvania for sale to resale customers would destroy the pool economies under the established method of operation". Moreover, a fixed rate for such energy will tend to defeat the purposes of the pooling arrangements in that the most economical sources of energy may not be utilized to meet the over-all energy requirements of Penn Water's Pennsylvania customers.

Finally, we find that no provision is made by Penn Water in its "Tariff" for adjustment of rates for variations in the cost of fuel. A consideration of the necessity for such an adjustment may conveniently be combined with an explanation of the nature of the clause embodied in the schedules we shall prescribe.

With the exception to the sale to PP&L, all existing contracts for Penn Water's sales to its Pennsylvania customers contain fuel cost adjustment clauses. Those clauses, however, are not uniform. The absence of any fuel cost adjustment clause in the contract with PP&L resulted in rates which were unduly preferential and discriminatory between PP&L and the other Pennsylvania customers.

To the extent that the supply of Pennsylvania customers' energy requirements depends upon utilization of Baltimore Company's steam generation (as the Commis-

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5. In Opinion No. 173-A we have discussed Penn Water's efforts in this regard and the litigation it initiated in the United States District Court for the District of Maryland to accomplish this disintegration of the power pool.



sion recognized in Opinion No. 173 and accompanying order when it took into account an allocated part of the expense of that generation in determining the cost of service to the Pennsylvania customers), proper fuel cost adjustment clauses in the rates charged those customers are necessary to avoid undue discrimination against Baltimore Company by imposing on it any increased costs of serving the Pennsylvania customers due to increase in fuel costs, and to avoid undue preference to Baltimore Company by giving it any savings due to decrease in fuel costs, as compared with the test year 1946.

Therefore a proper fuel cost adjustment clause uniformly applicable to all Pennsylvania customers is necessary to avoid an undue preference or discrimination among the Pennsylvania customers and between them, on the one hand, and the Baltimore Company, on the other.

In the case of the service to the Pennsylvania Railroad, the fuel cost adjustment clause must, of course, be applied in computing the cost of that service to be credited to Baltimore Company. Inasmuch as the rate to the Railroad is being left unreduced by the Commission, the cost of that service (instead of the revenues from the service, as in the case of the other Pennsylvania customers) will, under the Commission's previous orders and opinions, be used in computing the credit. (Otherwise, the non-reduction in the rates to the Railroad would be rendered nugatory to Penn Water, being offset by the greater reduction in the rates to Baltimore Company due to the larger credit.)

A fuel cost adjustment clause applicable to the portion of the kilowatt-hours sold as firm energy to the Pennsylvania customers which is supplied by Baltimore Company, based upon variations from the average cost of fuel per kilowatt-hour in the year 1946 at all stations (excluding Pratt Street) of Baltimore Company and calculated as follows, is reasonable and proper (the energy supplied from Baltimore Company's energy includes the part of its two-



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thirds entitlement from Safe Harbor which is used to supply Pennsylvania customers):

Total adjustment in dollars for fuel costs = 
$$\frac{(A + B - C) \cdot S \cdot z}{A}$$

A = Total firm and net interchange energy sales to Pennsylvania customers in kilowatt-hours

B = Energy deliveries to Baltimore Company at Highlandtown in kilowatt-hours

C = Energy available to Penn Water, at points of delivery to others, from own generation and its entitlement to 1/3 Safe Harbor generation in kilowatt-hours

S = Firm energy sales to Pennsylvania customers in kilowatt-hours

z = Baltimore Company's average cost of fuel in dollars per kilowatt-hour in immediately preceding month minus the average cost in dollars of fuel per kilowatt-hour in the year 1946 (.003408 in 1946)

The cost of fuel per kilowatt-hour shall be computed from the amounts properly chargeable by Baltimore Company to Account 703 of the Uniform System of Accounts and the net generation of its fuel-burning stations (excluding Pratt Street Station).<sup>6</sup> For the year 1946, factor z would have been zero. The Federal Power Commission, by its Opinion No. 173 and order issued January 5, 1949, in the Matter of Pennsylvania Water & Power Company, Docket No. IT-5915, found that for the year 1946 factors A, B, and C, above, were as follows:

A = 937,950 mwh

B = 376,684 mwh

C = 992,320 mwh

6. Omitted because its operation is determined by the need for steam to supply steam heating customers.

Special facilities charges in Penn Water's "tariff" differ from the costs of service allocable thereto as set forth in the Commission's opinions and orders and must therefore be rejected.

For the foregoing reasons, the Commission finds that "FPC Electric Tariff, Original Volume No. 1", filed by Penn Water on May 31, 1949, does not comply with the requirements of the Commission's Opinions Nos. 173 and 173-A and accompanying orders, and does not set forth rates which would be just, reasonable and not unduly discriminatory or preferential.

The Rkvah charges set forth in connection with the power factor clause in the several schedules of the "tariff", and the differentiations in charges for the several described classes of service to Metropolitan Edison, and the spinning reserve capacity charge, set forth in Schedule C of the "tariff", are not supported by evidence of record showing corresponding allocable costs for such elements of service or differentiations in service. In the absence of any protest, however, we think there is justification in the record for allowing some discretion to Penn Water on those aspects of the rates, subject to further order of the Commission if on protest or the Commission's own motion they shall be found in operation to be unduly discriminatory or preferential, or to produce revenues not effectuating the reduction contemplated by our prior orders and opinions. With this reservation we shall, therefore, adopt Penn Water's proposals on those aspects of the rates.

With that reservation, and with the changes necessary to eliminate the foregoing objections, the schedules hereinafter prescribed substantially conform to the proposals set forth in Penn Water's "tariff".

The Commission, upon further consideration of the record in the above-entitled proceedings, including the filing made in purported compliance with its orders and opinions and reports filed with the Commission pursuant

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to the requirements of the Commission's stay order, further finds:

- (1) The attached rate schedules, as hereinafter prescribed, effectuate the requirements of Opinions Nos. 173 and 173-A and accompanying orders and set forth rates which are just, reasonable, and not unduly discriminatory or preferential.
- (2) Penn Water did not properly compute and segregate the difference between the payments received by Penn Water under existing rates or arrangements and those required under Commission Opinion No. 173 and order issued January 5, 1949, while the Commission's stay order remained in effect.

*The Commission orders:*

- (A) The "FPC Electric Tariff, Original Volume No. 1" filed by Penn Water on May 31, 1949, be and the same is hereby rejected.
- (B) The accompanying rate schedules, hereby made a part hereof by reference, are prescribed as the schedules of rates and charges for the indicated services by Penn Water, effective February 1, 1949, with the reservation hereinabove set forth with respect to the charges for Rkvah and spinning reserve and differentiated services to Metropolitan Edison, and subject to the terms and conditions of the stay order issued April 29, 1949, by the United States Court of Appeals for the District of Columbia Circuit in "Pennsylvania Water & Power Company, et al. v. Federal Power Commission, No. 10236," (of which we take notice for this purpose), the several schedules applying to service to the customers shown, respectively, as follows:

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Designation	Customer
Pennsylvania Water & Power Company, FPC Prescribed Rate Schedule A	Baltimore Company
Pennsylvania Water & Power Company, FPC Prescribed Rate Schedule B	PP&L
Pennsylvania Water & Power Company, FPC Prescribed Rate Schedule C	Philadelphia Company
Pennsylvania Water & Power Company, FPC Prescribed Rate Schedule D	Metropolitan Company

- (C) Within 120 days from the date of issuance of this order Penn Water shall file a statement showing a computation of the total amount by which the amounts earmarked, separately accounted for, and retained in a segregated reserve pursuant to the conditions of the Commission's stay order issued January 31, 1949, differed from the amounts representing the difference between the payments received by Penn Water under existing rates or arrangements and those which would have been received under the rate schedules hereinabove prescribed. Penn Water shall adjust such reserve to make it equal to the amount of the difference between payments actually received and those which would have been received under the rate schedules hereinabove prescribed while the Commission's stay order remained in effect, and shall file certified copies of the accounting entries effectuating such adjustment with its statement.

By the Commission.

Leon M. Fuquay,  
Secretary.

Date of Issuance: October 27, 1949



**PENNSYLVANIA WATER & POWER COMPANY****F. P. C. Prescribed Rate Schedule A**

Effective on and after February 1, 1949, subject only to the terms and conditions of the stay order issued April 29, 1949, by the United States Court of Appeals for the District of Columbia Circuit, in "Pennsylvania Water & Power Company, et al., v. Federal Power Commission, No. 10236", the amount to be paid to Pennsylvania Water & Power Company (Penn Water) by Consolidated Gas Electric Light and Power Company of Baltimore (Baltimore Company) for power and energy service as heretofore rendered pursuant to Pennsylvania Water & Power Company Rate Schedule F. P. C. No. 1, as supplemented, and for transmission service as heretofore rendered by Penn Water and Susquehanna Transmission Company of Maryland to Baltimore Company pursuant to Article VII of Pennsylvania Water & Power Company, F. P. C. Rate Schedule No. 8, shall be the net sum of the following charges and credits:

**(A) Gross annual charges:****(1) RETURN**

Return shall be computed at  $5\frac{1}{4}\%$  of the consolidated (Penn Water and Susquehanna Transmission Company of Maryland—Transmission Company—) net investment rate base, determined as of December 31, 1948, and as of each June 30 and December 31 thereafter for the succeeding six months' period, by adding to the actual legitimate investment (\$33,113,148) determined by the Commission as of December 31, 1946, Opinion No. 173, the cost of additions of used and useful electric plant to the respective dates indicated less the cost of electric plant retired, and by deducting the consolidated depreciation reserves according to the books of the respective companies after a downward adjustment of \$213,239.71 as determined by the Commission, Opinion No.



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173, and by adding an allowance for working capital consisting of the average monthly balance of electric utility materials and supplies for the 12-month period immediately preceding the date as of which the computation is made and one-eighth of the necessary operating and maintenance expenses, exclusive of purchased power and taxes, for the same period; provided however, that in the case of a substantial addition to property which is put in service between the dates for determination of the rate base, Penn Water may petition the Commission to include the cost thereof in the rate base from the date of commercial operation.

(2) **EXPENSES**

Expenses shall be computed as the total of the following:

- (a) The reasonable and necessary consolidated operation, maintenance, and general expenses.
- (b) The cost of the electric power and energy purchased from Safe Harbor and from other sellers with whom Penn Water may now have contracts, or may hereafter contract for such purchase.
- (c) Annual depreciation expense of Penn Water and Transmission Company computed in conformity with the Commission's Opinion No. 173 and order issued January 5, 1949, in the Matter of Pennsylvania Water & Power Company, Docket No. IT-5915.
- (d) Taxes of Penn Water and Transmission Company, properly allocable to Account 507 of the Commission's Uniform System of Accounts applicable to their electric plant and operations, including income taxes, but not including any income taxes on revenues received from Pennsylvania Railroad in excess of the cost to serve

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that Company as described in (B) (4) hereinafter.

(B) Gross annual credits:

- (1) The Conowingo backwater payment.
- (2) All of Penn Water's electric revenues, other than those derived from Pennsylvania Railroad (Railroad) and those derived under this rate schedule.
- (3) \$141,777 per year in adjustment of revenue received by Penn Water from Pennsylvania Railroad for special facilities provided by Baltimore Company as found in Opinion No. 173.
- (4) The cost of the services rendered Railroad under a contract dated September 2, 1931, as amended by agreements dated August 15, 1934 and June 22, 1938 with Pennsylvania Railroad, computed as the sum of the following:
  - (a) 2.43 mills per kilowatt-hour multiplied by the annual energy supplied in Pennsylvania to the Pennsylvania Railroad.
  - (b) \$16.66 per kilowatt per year times the portion of the total billing demand of the Pennsylvania Railroad supply under contracts referred to in paragraph (B) (4), which portion of the demand is to be the annual maximum among the products for each month of the year of the monthly billing demand and the ratio for that month of the energy supplied to the Pennsylvania Railroad in Pennsylvania to the total energy supplied to the Pennsylvania Railroad.
  - (c) \$109,354 per year for special facilities provided by Penn Water.
  - (d) A debit or credit monthly adjustment in the 2.43 mill rate fixed in (a) above for variations from the average cost of fuel per kilowatt hour

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in the year 1946 at all steam stations of Baltimore Company, excluding Pratt Street Station; applicable only to the portion of kilowatt-hours sold to Pennsylvania Railroad ((4) (a) above) in the current billing month supplied from Baltimore Company's energy, determined as indicated hereinafter (Baltimore Company's energy includes the part of its two-thirds entitlement from Safe Harbor which is used to supply Pennsylvania customers). The monthly adjustment shall be computed as follows:

Total adjustment in  $(A + B - C)$  s . z  
dollars for fuel costs =  $\frac{\quad}{\quad}$

A

A=Total firm and net interchange energy sales to Pennsylvania customers in kilowatt-hours

B=Energy deliveries to Baltimore Company at Highlandtown in kilowatt-hours

C=Energy available to Penn Water, at points of delivery to others, from its own generation and its entitlement to 1/3 of Safe Harbor's generation in kilowatt-hours

s=Firm energy sales in kilowatt-hours to Pennsylvania Railroad computed as determined under (4) (a) above

z=Baltimore Company's average cost of fuel in dollars per kilowatt-hour in the immediately preceding month minus the average cost of fuel in dollars per kilowatt-hour in the year 1946 (.003408 in 1946).

The cost of fuel per kilowatt-hour shall be computed from the amounts properly chargeable

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by Baltimore Company to Account 703 of the Uniform System of Accounts and the net generation of its fuel-burning stations, ~~ex~~cluding Pratt Street Station. For the year 1946, factor  $z$  would have been zero. The Federal Power Commission, by its Opinion No. 173 and accompanying order, issued January 5, 1949, in the matter of Pennsylvania Water & Power Company, Docket No. IT-5915, found that for the year 1946 factors A, B and C, above, were as follows:

$$A=937,950 \text{ mwh}$$

$$B=376,684 \text{ mwh}$$

$$C=992,320 \text{ mwh.}$$

The net annual billing to Baltimore Company shall be determined as the difference between the sum of the charges under (A), above, and the sum of the credits under (B), above. Settlement for the difference between annual charges and the annual credits shall be made on a monthly basis, using estimated data wherever necessary, with subsequent adjustment to the correct annual settlement effected by February 15 of the following year.

The foregoing provisions supersede only the rates and charges heretofore made, demanded, collected or assessed against Baltimore Company by Penn Water and Transmission Company. All other provisions of the aforementioned contracts, in and of themselves lawful prescribing or defining the power, energy and transmission services to be furnished, or any classification, practice, regulation or rule affecting such services, which several provisions are incorporated herein by reference, shall be observed and be in force.



**PENNSYLVANIA WATER & POWER COMPANY,****F. P. C. Prescribed Rate Schedule-B**

Effective on and after February 1, 1949, subject only to the terms and conditions of the stay order issued April 29, 1949, by the United States Court of Appeals for the District of Columbia Circuit, in "Pennsylvania Water & Power Company, et al., v. Federal Power Commission, No. 10236", the amount to be paid to Pennsylvania Water & Power Company by Pennsylvania Power & Light Company for firm power and energy service rendered to Pennsylvania Power & Light Company under agreement dated May 1, 1933, as amended by letter agreements dated June 11, 1934 and April 28, 1939, and as set forth in the service contract between Pennsylvania Water & Power Company and Edison Electric Company of Lancaster, Pennsylvania, dated October 9, 1912, as amended under date of October 19, 1923 to the extent that the provisions thereof are continued in effect by the foregoing service contract as amended, shall be the sum of the following charges:

**Demand charge:**

\$1.38 per month per kw of Billing Demand as herein-after defined

**Energy charge:**

2.5 mills per kwh for all kilowatt-hours except for 4,000 volt service at Holtwood, and

6.0 mills per kwh for 4,000 volt service at Holtwood, all subject to the fuel cost adjustment hereinafter provided.

**Special facility charge:**

\$965 per month

**Fuel cost adjustment:**

The rates for energy are subject to monthly adjustment for variations from the average cost of fuel per kilowatt-hour in the year 1946 at all steam stations of

Consolidated Gas Electric Light and Power Company of Baltimore (Baltimore Company) except Pratt Street Station; but such adjustment shall apply only to the portion of kilowatt-hours sold hereunder in the current billing month which has been supplied from Baltimore Company's energy, determined as indicated hereinafter (Baltimore Company's energy includes the part of its two-thirds entitlement from Safe Harbor which is used to supply Pennsylvania customers). The adjustment shall be computed as follows:

$$\begin{array}{l} \text{Total adjustment in dollars} \quad (A + B - C) \cdot s \cdot z \\ \text{for fuel costs} \quad \quad \quad = \frac{\quad}{A} \end{array}$$

A=Total firm and net interchange energy sales to Pennsylvania customers in kilowatt-hours

B=Energy deliveries to Baltimore Company at Highlandtown in kilowatt-hours

C=Energy available to Penn Water, at points of delivery to others, from its own generation and its entitlement to 1/3 of Safe Harbor's generation in kilowatt-hours

s=Firm energy sales under this rate schedule in kilowatt-hours.

z=Baltimore Company's average cost of fuel in dollars per kilowatt-hour in the immediately preceding month minus the average cost of fuel in dollars per kilowatt-hour in the year 1946 (.003408 in 1946).

The cost of fuel per kilowatt-hour shall be computed from the amounts properly chargeable by Baltimore Company to Account 703 of the Uniform System of Accounts and the net generation of its fuel-burning stations, excluding Pratt Street Station. For the year 1946, factor  $z$  would have been zero. The Federal Power Commission, by its Opinion No. 173 and accompanying order, issued January

5, 1949, in the matter of Pennsylvania Water & Power Company, Docket No. IT-5915, found that for the year 1946, factors A, B and C, above, were as follows:

A=937,950 mwh

B=376,684 mwh

C=992,320 mwh

**Billing Demand:**

The Billing Demand in any month shall be the maximum power requirements of the services specified in the existing service contract (excluding the Excess Energy under Article IV of the Contract dated May 1, 1933 and excluding interchange service), measured on a clock one-hour integrated basis in units of 1,000 kilowatts (1,000 kw<sub>h</sub> per hour) during such month or the preceding eleven months. 4,000 volt service at Holtwood is excluded in the determination of Billing Demand.

**Power Factor:**

.02 mills per lagging reactive kilovolt-ampere-hour for all such kilovolt-ampere-hours supplied per month numerically in excess of 50% of the kilowatt-hours of energy supplied under this rate schedule in that month.

The foregoing provisions supersede the rates and charges, together with any adjustments thereof, heretofore in effect under Article VI, Article XI and Appendix A of the aforementioned agreement of May 1, 1933, paragraph 7 of the aforementioned agreement of June 11, 1934, and paragraphs (5), (7), option B of (9) and (13) of the aforementioned agreement of April 28, 1939. All other provisions of the aforementioned agreements, not inconsistent with the rates and charges prescribed herein, shall remain in full force and effect.

**PENNSYLVANIA WATER & POWER COMPANY****F. P. C. Prescribed Rate Schedule C**

Effective on and after February 1, 1949, subject only to the terms and conditions of the stay order issued April 29, 1949, by the United States Court of Appeals for the District of Columbia Circuit, in "Pennsylvania Water & Power Company, et al., v. Federal Power Commission, No. 10236", the amount to be paid to Pennsylvania Water & Power Company by Philadelphia Electric Company, for firm power and energy service rendered to Philadelphia Electric Company under agreement dated August 1, 1933, as supplemented by agreement dated December 13, 1938, shall be the sum of the following charges:

**Demand charge:**

\$1.38 per month per kw of Billing Demand as hereinafter defined

**Energy charge:**

2.5 mills per kwh, subject to the fuel cost adjustment hereinafter provided

**Special facility charge:**

\$5,977 per month

**Fuel cost adjustment:**

The rate for energy is subject to monthly adjustment for variations from the average cost of fuel per kilowatt-hour in the year 1946 at all steam stations of Consolidated Gas Electric Light and Power Company of Baltimore (Baltimore Company) excluding Pratt Street Station; but such adjustment shall apply only to the portion of kilowatt-hours sold hereunder in the current billing month which has been supplied from Baltimore Company's energy, determined as indicated hereinafter. (Baltimore Company's energy includes the part of its two-thirds en-



titlement from Safe Harbor which is used to supply Pennsylvania customers). The adjustment shall be computed as follows:

$$\begin{array}{l} \text{Total adjustment in dollars} \quad (A + B - C) \cdot s \cdot z \\ \text{for fuel costs} \quad \quad \quad = \frac{\quad}{A} \end{array}$$

A = Total firm and net interchange energy sales to Pennsylvania customers in kilowatt-hours

B = Energy deliveries to Baltimore Company at Highlandtown in kilowatt-hours

C = Energy available to Penn Water, at points of delivery to others, from its own generation and its entitlement to 1/3 of Safe Harbor's generation in kilowatt-hours

s = Firm energy sales under this rate schedule in kilowatt-hours

z = Baltimore Company's average cost of fuel in dollars per kilowatt-hour in the immediately preceding month minus the average cost of fuel in dollars per kilowatt-hour in the year 1946 (.003408 in 1946).

The cost of fuel per kilowatt-hour shall be computed from the amounts properly chargeable by Baltimore Company to Account 703 of the Uniform System of Accounts and the net generation of its fuel-burning stations, excluding Pratt Street Station. For the year 1946, factor z would have been zero. The Federal Power Commission, by its Opinion No. 173 and accompanying order, issued January 5, 1949, in the matter of Pennsylvania Water & Power Company, Docket No. IT-5915, found that for the year 1946 factors A, B and C, above, were as follows:

A = 937,950 mwh

B = 376,684 mwh

C = 992,320 mwh

**Billing Demand:**

The Billing Demand in any month shall be the maximum power requirements of the services specified in the existing service contract (excluding emergency supply under Article II, Section 2 of the contract dated August 1, 1933), measured on a clock one-hour integrated basis in units of 1,000 kilowatts (1,000 kwh per hour) during such month or the preceding eleven months.

**Power Factor:**

0.2 mills per lagging reactive kilovolt-ampere-hour for all such kilovolt-ampere-hours supplied per month numerically in excess of 50% of the kilowatt-hours of energy supplied under this rate schedule in that month.

The foregoing provisions supersede the rates and charges, together with any adjustments thereof, heretofore in effect under Sections 1, 2, 4 and 5 of Article III and Article V of the agreement of August 1, 1933 and the Supplement to Coatesville Power Supply Contract RE Night Service Rider dated August 1, 1933 and under the letter agreements dated February 8, 1944 and February 9, 1944. All other provisions of the aforementioned agreements, not inconsistent with the rates and charges prescribed herein, shall remain in full force and effect.

**PENNSYLVANIA WATER & POWER COMPANY****F. P. C. Prescribed Rate Schedule D**

Effective on and after February 1, 1949, subject only to the terms and conditions of the stay order issued April 29, 1949, by the United States Court of Appeals for the District of Columbia Circuit, in "Pennsylvania Water & Power Company, et al., v. Federal Power Commission, No. 10236", the amount to be paid to Pennsylvania Water & Power Company by Metropolitan Edison Company for firm power and energy service rendered to Metropolitan Edison Company under agreement dated November 15, 1945, shall be the sum of the following charges:

**Demand charge:**

- \$1.38 per month per kw of specified firm power.
- \$0.40 per hour per 1,000 kw of spinning reserve capacity for each clock hour in which such capacity is provided

**Energy charge:**

- (a) 3.5 mills per kilowatt-hour for energy supplied in any month in the portion of the customer's total requirements above its steam line,
- (b) 2.75 mills per kilowatt hour for energy supplied in any month, between the hours of 7 a. m. and 9 p. m., Eastern Standard Time, or Daylight Saving Time when in effect, on all days except Sundays and holidays in the customer's specified area, in excess of energy billed under Section (a) above, and
- (c) 2.0 mills per kilowatt hour for all additional energy supplied in any month in excess of energy billed under Sections (a) and (b) above, all subject to the fuel cost adjustment hereinafter provided.

**Special facility charge:**

\$3,567 per month

**Fuel cost adjustment:**

The rates for energy are subject to monthly adjustment for variations from the average cost of fuel per kilowatt-hour in the year 1946 at all steam stations of Consolidated Gas Electric Light and Power Company of Baltimore (Baltimore Company) excluding Pratt Street Station; but such adjustment shall apply only to the portion of kilowatt-hours sold hereunder in the current billing month which has been supplied from Baltimore Company's energy, determined as indicated hereinafter (Baltimore Company's energy includes the part of its two-

*Exhibit C to Petition for Review*

thirds entitlement from Safe Harbor which is used to supply Pennsylvania customers). The adjustment shall be computed as follows:

$$\text{Total adjustment in dollars} = \frac{(A+B-C)}{A} \cdot s \cdot z$$

A

A=Total firm and net interchange energy sales to Pennsylvania customers in kilowatt-hours

B=Energy deliveries to Baltimore Company at Highlandtown in kilowatt-hours

C=Energy available to Penn Water, at points of delivery to others, from its own generation and its entitlement to 1/3 of Safe Harbor's generation in kilowatt-hours

s=Firm energy sales under this rate schedule in kilowatt-hours

z=Baltimore Company's average cost of fuel in dollars per kilowatt-hour in the immediately preceding month minus the average cost of fuel in dollars per kilowatt-hour in the year 1946 (.003408 in 1946).

The cost of fuel per kilowatt-hour shall be computed from the amounts properly chargeable by Baltimore Company to Account 703 of the Uniform System of Accounts and the net generation of its fuel-burning stations, excluding Pratt Street Station. For the year 1946, factor *z* would have been zero. The Federal Power Commission, by its Opinion No. 173 and accompanying order, issued January 5, 1949, in the Matter of Pennsylvania Water & Power Company, Docket No. IT-5915, found that for the year 1946 factors A, B and C, above, were as follows:

A=937,950 mwh

B=376,684 mwh

C=992,320 mwh



**Power Factor:**

0.2 mills per lagging reactive kilovolt-ampere-hour for all such kilovolt-ampere-hours supplied per month numerically in excess of 50% of the kilowatt-hours of energy supplied under this rate schedule plus kilowatt hours use of spinning reserve capacity in that month.

The foregoing provisions supersede the rates and charges, together with any adjustments thereof, heretofore in effect under Sections 1, 2, 3, 4, 5, 6 of Article V and Article VI of the agreement of November 15, 1945. All other provisions of the aforementioned agreement, not inconsistent with the rates and charges prescribed herein, shall remain in full force and effect.

**EXHIBIT D.****UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION**

In the Matter of

PENNSYLVANIA WATER & POWER  
COMPANY

} Docket No. IT-5915

**APPLICATION FOR REHEARING OF ORDER  
ISSUED OCTOBER 27, 1949**

(Filed November 25, 1949)

Pennsylvania Water & Power Company (Penn Water), Respondent and Petitioner herein; being aggrieved on its own behalf by the Order issued by the Commission on October 27, 1949; and being separately and independently aggrieved by such Order as the owner of one-half of the Class B voting stock of Safe Harbor Water Power Corporation (Safe Harbor), said Safe Harbor being unable to intervene in this proceeding because of the deadlock in its Board of Directors as set forth in Petitioners' Application for Rehearing of the Commission's Order issued January 5, 1949, filed in this proceeding on January 28, 1949; and Penn Water being also separately and independently so aggrieved as agent for and on behalf of Safe Harbor under the provisions of certain contracts with Pennsylvania Power & Light Company (PP&L) and Philadelphia Electric Company (Philadelphia Company); and Susquehanna Transmission Company of Maryland (Transmission Company), Respondent and Petitioner herein, also being aggrieved by such Order; hereby apply to the Federal Power Commission (Commission) for a rehearing of said Order issued October 27, 1949, as provided by Section 313 (a) of the Federal Power Act (16 U. S. C. § 825-1 (a); 49

Stat. 860) and of all of the matters presented or involved in this proceeding and covered or affected by said Order; and pray that the said Order be abrogated, vacated, set aside, and reversed because of the matters erroneously decided, the Commission's lack of jurisdiction and errors with respect thereto, and the objections of Petitioners to said Order to wit: Petitioners respectfully show that in and by said Order issued October 27, 1949, the Commission erroneously and without jurisdiction decided each and all of the following matters and committed each and all of the following errors, and Petitioners object to said Order because of each and all of said matters so decided and said errors for each and all of the following reasons:

#### STATUS OF THIS PROCEEDING

On January 5, 1949 the Commission, in its Docket No. IT-5915, issued its "Order Reducing Rates" and accompanying Opinion No. 173 pursuant to which Penn Water was required, among other things, to file new schedules of rates and charges for or in connection with its services to PP&L, Philadelphia Company and Metropolitan Edison Company to provide for the reductions specified in paragraph (C) of such Order and pursuant to which Penn Water was also required to file a new schedule of rates and charges for its services to Consolidated Gas Electric Light & Power Company of Baltimore (Baltimore Company) which, together with revenues from the Conowingo backwater payment, sales to PP&L, Philadelphia Company and Metropolitan Edison Company, and the alleged cost of service to the Pennsylvania Railroad, would provide a  $5\frac{1}{4}\%$  return to Penn Water and Transmission Company after operating expenses and depreciation, all as set forth in paragraph (D) of said Order.

On January 28, 1949 Penn Water and Transmission Company filed with the Commission their application for rehearing of the Commission's Order issued January 5, 1949.

*Exhibit D to Petition for Review*

On February 28, 1949 the Commission issued its Order and accompanying Opinion No. 173-A denying the Petitioners' application for rehearing of the Order issued January 5, 1949 and in addition amending its former Order in certain respects.

On March 11, 1949 Petitioners filed with the Commission their application for rehearing of the Commission's Order issued February 28, 1949 which was denied by the Commission by its Order issued on March 17, 1949.

On April 22, 1949 Petitioners filed in the Court of Appeals for the District of Columbia Circuit their petition for review of the Commission's Orders of January 5, 1949, January 31, 1949, February 28, 1949 and March 17, 1949.

On April 28, 1949 the Court of Appeals for the District of Columbia Circuit issued an Order staying the effectiveness of paragraphs (C) and (D) of the Commission's Order of January 5, 1949 but requiring Penn Water to file the rate schedules required by said paragraphs (C) and (D) of said Order.

On May 31, 1949 Penn Water filed certain rate schedules with the Commission in compliance with the said Order of the Court of Appeals.

On June 2, 1949 the Commission filed with the Court of Appeals for the District of Columbia Circuit the transcript of the record of the proceedings upon which its Orders were based.

On October 27, 1949, after exclusive jurisdiction to alter, amend, modify or set aside said Orders had vested in the Court of Appeals by reason of the filing of the transcript as provided in Section 313 (b) of the Federal Power Act (16 U. S. C. § 825-1 (b); 49 Stat. 860), the Commission issued its Order rejecting the rate schedules filed by Penn Water and inaugurating its own rate schedules for Penn Water's services to PP&L, Philadelphia Company, Metropolitan Edison Company and Baltimore Company.



**SPECIFICATIONS OF ERROR**

Petitioners believe and, therefore, respectfully allege, that the Commission's Order of October 27, 1949 is issued in violation of its statutory authority and is, therefore, illegal, null and void pursuant to Section 313 (b) of the Federal Power Act, which vests exclusive authority in the Court of Appeals to alter, amend, modify or set aside the Commission's Orders in its Docket No. IT-5915 upon the filing of the record of the proceedings with said Court of Appeals, because said Order of October 27, 1949 amends and modifies the Commission's previous Orders in the following respects:

(1) It requires the rate schedule for services to Baltimore Company to include a credit to Baltimore Company in the amount of \$141,777, which credit is not required by the Order of January 5, 1949 as amended by the Order of February 28, 1949.

(2) It requires that the rate schedule for services to Baltimore Company include a credit to Baltimore Company for fuel cost adjustment (Pennsylvania Railroad), which said credit was not required by the Order of January 5, 1949 as amended by the Order of February 28, 1949.

(3) It requires that the rate schedule to PP&L include a provision for fuel cost adjustment, which said provision is not required by the Order of January 5, 1949 as amended by the Order of February 28, 1949.

(4) It requires that the rate schedules for services to Philadelphia Company and Metropolitan Edison Company include a provision for fuel cost adjustment in accordance with a formula specified in said Order, which formula is not required by the Order of January 5, 1949 as amended by the Order of February 28, 1949.

Petitioners also believe and, therefore, respectfully allege, that the Commission's said Order of October 27, 1949

was erroneously issued for each and all of the reasons specified in Petitioner's application for rehearing of Order issued January 5, 1949 filed herein on January 28, 1949 and in Petitioner's application for rehearing of Order issued February 28, 1949 filed herein on March 11, 1949.

Petitioners also believe and, therefore, respectfully allege that assuming *arguendo* the Commission's authority to issue any order altering, amending or modifying its previous Orders in this proceeding, after the filing of the transcript of the record with the Court of Appeals for the District of Columbia Circuit, said Order of October 27, 1949 is further illegal, null and void in that it requires an adjustment of Penn Water's rate schedules and introduces new matters therein without prior notice to Penn Water and without affording Penn Water an opportunity to be heard thereon or to present evidence with respect thereto, in violation of Sections 20 (15 U. S. C. §§ 813; 41 Stat. 1073) and 206 (15 U. S. C. 824e; 49 Stat. 852) (to the extent, if any, that such sections may be applicable to Penn Water) of the Federal Power Act, Sections 4 and 5 of the Administrative Procedure Act (5 U. S. C. §§ 1003, 1004; 60 Stat. 238, 239) and the Fifth Amendment to the Constitution.

Petitioners also believe and, therefore, respectfully allege that the rate schedules prescribed by said Order of October 27, 1949, insofar as the amount of \$141,777 required to be credited to Baltimore Company is concerned, constitute an adjustment or revision of the divisional agreement between Penn Water and Baltimore Company for division of Pennsylvania Railroad revenues, without authority or jurisdiction in the Commission under the Federal Power Act to regulate such divisions.

Petitioners also believe and, therefore, respectfully allege that paragraph (B) of said Order of October 27, 1949 is unlawful in that it constitutes an attempt to prescribe a rate reduction in excess of that prescribed by the Commission's Order of January 5, 1949, effective retroactively to

February 1, 1949, without authority under the Federal Power Act.

Petitioners also believe and, therefore, respectfully allege that assuming *arguendo* the Commission's authority to issue any order altering, amending or modifying its previous Orders in this proceeding, after the filing of the transcript of the record with the Court of Appeals for the District of Columbia Circuit, said Order of October 27, 1949 is further illegal, null and void in that it is not based upon substantial evidence.

Petitioners file this application for rehearing of the Commission's Order of October 27, 1949 pursuant to Section 313 (a) of the Federal Power Act (16 U. S. C. § 825-1 (a); 49 Stat. 860) without conceding the authority of the Commission to issue said Order and without prejudice to the rights of Petitioners to maintain that said Order is illegal, null and void and of no effect whatever inasmuch as said Order attempts to alter, amend or modify the previous Orders of the Commission in this proceeding after the filing of the transcript of the record with the Court of Appeals for the District of Columbia Circuit, upon which filing exclusive jurisdiction to take any action affecting the prior Orders of the Commission in this proceeding vested in said Court of Appeals pursuant to Section 313 (b) of the Federal Power Act (16 U. S. C. § 825-1 (b); 49 Stat. 860).

In support of the foregoing allegations, Petitioners respectively submit their detailed specifications of error in respect of the findings and Order of the Commission issued October 27, 1949 and the statements in the accompanying opinion therewith.

#### *I—Opinion of the Commission*

Insofar as any of the preliminary statements in the Commission's Order issued October 27, 1949, purport to be definite findings of fact or conclusions, or anything more than mere illustrative explanations of the Commission's

conclusions in said Order of October 27, 1949, each and all of the following portions thereof are erroneous, unconstitutional, unlawful, arbitrary, capricious, contrary to the evidence of record, unsupported by any substantial evidence of record; and operate to deprive Petitioners of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, and constitute and result in exercise of authority in excess of statutory jurisdiction, authority, or limitations; and Petitioners seek rehearing on each and every one of the following portions thereof for the foregoing reasons and on the grounds as hereinafter stated:

(1) The statement of the Commission on page 2 of said Order as follows:

“Consideration of Penn Water’s ‘FPC Electric Tariff’ impels the conclusion that in many respects it fails to comply with the Commission’s opinions and orders in this case; that it should be rejected; and that proper rate schedules should be prescribed by the Commission.”

on the grounds that such statement is not supported by the record; that the FPC Electric Tariff filed herein by Penn Water effects the reduction in Penn Water’s rates and charges required by paragraphs (C) and (D) of the Commission’s Order issued January 5, 1949; that said FPC Electric Tariff does not fail to comply with any essential element of the requirements of the Commission as contained in paragraphs (A) to (I) of said Order and in fact follows the language and terms of the Commission’s requirements as nearly as it is practicable to do so; and that such variances as there may be from the terms of said Order are matters of form and do not affect the dollar amounts involved.

(2) The statement of the Commission on pages 2 and 3 of said Order as follows:



“ \* \* the Commission ordered Penn Water (alone) to file the rate schedules for such sales [To PP&L, Philadelphia Company and Baltimore Company]. \* \* \* ”

“ \* \* \* Penn Water disregards the Commission's order that Penn Water (not Penn Water jointly with someone else not a party to the proceeding) file schedules of its rates for services the Commission has determined Penn Water alone renders, by filing, as one of purported joint sellers, schedules of joint rates for joint services. ”

on the grounds that such statements are not supported by the record; and paragraphs (A) to (I) of the Commission's Order issued January 5, 1949, do not prohibit or prevent Penn Water from filing rate schedules thereunder on behalf of itself and Safe Harbor subject to the voluntary concurrence of Safe Harbor applicable to service which Safe Harbor has an obligation to continue until relieved of such obligation in a lawful manner.

/ (3) The statements of the Commission on page 4 of said Order as follows:

“ The schedules filed by Penn Water for service to PP&L and Philadelphia Company also violate the order of January 5, in that they provide for service only to ‘the extent that there is available’, capacity, energy and other services. By so limiting the availability of service under these rate schedules ‘the present arrangements whereby sales to Pennsylvania customers are made on a firm basis’ would be materially altered, contrary to the Commission's order which required that the obligation of Penn Water to these customers for firm supply of energy at the rates required by the Commission's rate reduction be continued in effect. ”

on the grounds that:

(a) Such statements are not supported by the record; and nothing in paragraphs (A) to (I) of the Commission's Order issued January 5, 1949, required that any obligations of Penn Water be continued in effect as its sole obligation; or could require Penn Water to file tariffs for services it might not physically be able to render alone; and

(b) The conditions, in the FPC Electric Tariff filed by Penn Water herein, as to availability of service limited to the resources of energy, capacity, and other services of the suppliers is a reasonable provision and essential to maintain the ability of Penn Water and Safe Harbor or Penn Water alone to render adequate service to their customers. The record shows by uncontradicted evidence that it is an impossibility for Penn Water, without the joint obligation of Safe Harbor, to meet the requirements of PP&L and Philadelphia Company, from the resources of energy, capacity, and other services available to it under existing contracts, and at the same time meet the requirements of its obligations to Metropolitan Edison Company and The Pennsylvania Railroad Company. Any requirement by the Commission that Penn Water assume the sole obligation of serving PP&L and Philadelphia Company, and relieving Safe Harbor of its joint obligation to such customers, without a qualification as to availability of service such as contained in Penn Water's FPC Electric Tariff herein, will of necessity impair its ability to render adequate service to its other customers, contrary to the provisions of Section 207 (to the extent said section may be applicable to Penn Water) of the Federal Power Act (16 U. S. C. § 841 f; 49 Stat. 853) and contrary to the Pennsylvania Public Utility Law.

(4) The statements of the Commission on pages 4 and 5 of said Order as follows:

“ \* \* \* the rate schedule for service to Baltimore Company \* \* \* is not in accord with the requirements

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of the opinion and order because it fails to provide a credit to Baltimore Company in the net amount of \$141,777 \* \* \*. The allocation of costs of service for special facilities \* \* \* and the rate reductions ordered by the Commission are predicated on this credit to Baltimore Company of \$141,777 \* \* \*."

on the grounds that such statements are not supported by the record; and nothing in paragraphs (A) to (I) of the Commission's Order issued January 5, 1949, required that any such credit be given Baltimore Company in computing the charges to be paid by Baltimore Company to Penn Water; nor were the allocations of costs of service for special facilities or the rate reductions ordered by such paragraphs in such Commission's Order predicated on such credit to Baltimore Company.

(5) The statements of the Commission on page 5 of said Order as follows:

"As a result of improper computations, the proper amounts have not been segregated in the required reserve. The order herein, accordingly, requires Penn Water to compute the amounts correctly \* \* \*."

on the grounds that such statements are not supported by the record; that Petitioner has segregated in the required reserve amounts representing not less than the difference between payments received by Penn Water under existing rates or arrangements and those which would have been received under the provisions of paragraphs (A) to (I) of the Commission's Order issued January 5, 1949; and that the amounts required by the Commission's Order issued October 27, 1949, to be computed and segregated in the required reserve are in excess of the amounts required to be segregated by the Commission's Order issued January 31, 1949 and by the Order of the Court of Appeals for the District of Columbia filed April 29, 1949.

(6) The statements of the Commission on pages 5 and 6 of said Order as follows:

"Although the Commission's opinions and orders will be searched in vain for any finding or order justifying or requiring a rate schedule to be filed by Penn Water, or Baltimore Company, for the supply of electric energy by Baltimore Company to Penn Water, Penn Water has purported to file rate schedule "E" as part of its tariff, 'on behalf of' Baltimore Company. \* \* \*

"Under the presently existing service arrangements and pool operations, Baltimore Company's energy is used by Penn Water to meet its firm power obligations in Pennsylvania. \* \* \* Such operations require Baltimore Company to generate energy in its steam electric plants for transmission to Pennsylvania. \* \* \* No rate is, therefore, necessary for the supply of Baltimore Company's energy. \* \* \*

"Penn Water's filing, in this respect, appears to be part of its effort to disrupt the presently coordinated operations of the pool, and certainly not an effort to comply with the Commission's decision. \* \* \* Moreover, a fixed rate for such energy will tend to defeat the purposes of the pooling arrangements in that the most economical sources of energy may not be utilized to meet the over-all energy requirements of Penn Water's Pennsylvania customers."

on the grounds that such statements are not supported by any substantial evidence of record; that the Commission's Order of January 5, 1949 purported to regulate and fix the rates and charges for service by Baltimore Company to Penn Water and thus made necessary the filing of a schedule containing such rates and charges for the supply of such service by Baltimore Company; that unless such separate schedules for service by Baltimore Company to Penn Water are filed, any rate schedules required to be filed under the Commission's Order of January 5, 1949 for the combined services of Penn Water to Baltimore Company and Baltimore Company to Penn Water could result in



payments by Penn Water to Baltimore Company for service rendered by Penn Water to Baltimore Company; and that the provision of rate schedule "E", providing that energy supplied by Baltimore Company be delivered only upon request of Penn Water, would not disrupt coordinated operations and would not tend to defeat the purposes of any such arrangements, but on the contrary, is a necessary provision whereby Penn Water may obtain supplemental energy from the most economic or advantageous source in meeting the over-all energy requirements of its Pennsylvania customers.

(7) The statements of the Commission on pages 6 and 7 of said Order as follows:

"Finally, we find that no provision is made by Penn Water in its 'Tariff' for adjustment of rates for variations in the cost of fuel. \* \* \*

\* \* \* The absence of any fuel cost adjustment clause in the contract with PP&L resulted in rates which were unduly preferential and discriminatory between PP&L and the other Pennsylvania customers.

"To the extent that the supply of Pennsylvania customers' energy requirements depends upon utilization of Baltimore Company's steam generation \* \* \* proper fuel cost adjustment clauses in the rates charged those customers are necessary to avoid undue discrimination against Baltimore Company \* \* \* and to avoid undue preference to Baltimore Company \* \* \*.

"Therefore a proper fuel cost adjustment clause uniformly applicable to all Pennsylvania customers is necessary to avoid an undue preference or discrimination among the Pennsylvania customers and between them, on the one hand, and the Baltimore Company, on the other.

"In the case of service to the Pennsylvania Railroad, the fuel cost adjustment clause must, of course,

be applied in computing the cost of that service to be credited to Baltimore Company."

on the grounds that:

(a) such statements are not supported by any substantial evidence of record;

(b) nothing in the Commission's Order of January 5, 1949 required that any provision be made by Penn Water in its Tariff for adjustment of rates for variations in the cost of fuel;

(c) the differences in service requirements and characteristics between the various Pennsylvania customers, as shown by the evidence of record, justifies differences in rates, charges, and the regulations applicable thereto so that the presence or absence of fuel cost adjustments does not thereby result in unlawful preference or discrimination within the meaning of the Federal Power Act;

(d) the FPC Electric Tariff filed by Penn Water does not contain rates, charges or fuel cost adjustment clauses which are unduly preferential or discriminatory as between any of the Pennsylvania customers whose rates or charges the Commission purported to regulate by its Order of January 5, 1949 (except as required by the provisions of said Order); and nothing in such Tariff results in undue preference or discrimination as between such Pennsylvania customers and Baltimore Company (except as required by the provisions of said Order);

(e) there is no requirement for the application of a fuel cost adjustment in computing the cost of service to the Pennsylvania Railroad to be credited to Baltimore Company under paragraph (D) of the Commission's Order issued January 5, 1949; and such an adjustment results in the computation of the cost of service to be credited to Baltimore Company, under such paragraph, substantially in excess of the cost to be so credited without such adjustment.

(8) The statements of the Commission on pages 7 and 8 of said Order as follows:

"A fuel cost adjustment clause applicable to the portion of the kilowatt-hours sold as firm energy to the Pennsylvania customers which is supplied by Baltimore Company, based upon variations from the average cost of fuel per kilowatt-hour in the year 1946 at all stations (excluding Pratt Street) of Baltimore Company and calculated as follows, is reasonable and proper (the energy supplied from Baltimore Company's energy includes the part of its two-thirds entitlement from Safe Harbor which is used to supply Pennsylvania customers):

$$\text{Total adjustment in dollars for fuel costs} = \frac{(A + B - C) \cdot S \cdot z}{A}$$

A=Total firm and net interchange energy sales to Pennsylvania customers in kilowatt-hours

B=Energy deliveries to Baltimore Company at Highlandtown in kilowatt-hours

C=Energy available to Penn Water, at points of delivery to others, from own generation and its entitlement to 1/3 Safe Harbor generation in kilowatt-hours

S=Firm energy sales to Pennsylvania customers in kilowatt-hours

z=Baltimore Company's average cost of fuel in dollars per kilowatt-hour in immediately preceding month minus the average cost in dollars of fuel per kilowatt-hour in the year 1946 (.003408 in 1946)

"\* \* \* For the year 1946, factor z would have been zero." on the grounds that such statements are not sup-

ported by any substantial evidence of record, and no opportunity was given Penn Water to present any evidence with respect to such formula or to object thereto; that such formula is in error because it is applicable to electric energy other than energy generated by Baltimore Company at its steam stations in Baltimore and transmitted to Pennsylvania; that such formula is not applicable to steam generated energy supplied from Penn Water's own or from other sources, which energy is used by Penn Water in meeting the requirements of its Pennsylvania customers; and that application of such formula on a monthly basis for 1946 shows that the factor  $z$  would not have been zero.

(9) The statement of the Commission on page 8 of said Order as follows:

“Special facilities charges in Penn Water's ‘tariff’ differ from the costs of service allocable thereto as set forth in the Commission's opinions and orders and must therefore be rejected”.

on the grounds that the differences in the special facilities charges contained in Penn Water's Tariff were necessary in order that the reductions in revenues to be received from each of the Pennsylvania customers under the schedules contained in such Tariff would be equal to the reductions ordered by paragraph (C) of the Commission's Order of January 5, 1949; and, in particular, the revenues which would be received from Metropolitan Edison Company under the Penn Water Tariff are less than the amount of \$641,361 cost found by the Commission to be allocable to Metropolitan Edison Company in its opinion accompanying its Order of January 5, 1949, by reason of the fact that included in such costs are the costs associated with the Violet Hill Substation, which was sold by Penn Water early in 1946.

(10) The statement of the Commission on page 8 of said Order as follows:



"For the foregoing reasons, the Commission finds that 'FPC Electric Tariff, Original Volume No. 1', filed by Penn Water on May 31, 1949, does not comply with the requirements of the Commission's Opinions Nos. 173 and 173-A and accompanying orders, and does not set forth rates which would be just, reasonable and not unduly discriminatory or preferential." on each of the grounds stated in this paragraph I above.

## *II—The Findings of the Commission*

The Commission's statements, findings, and conclusions in its Order issued October 27, 1949, as referred to below are contrary to the evidence, unsupported by any substantial evidence, unsupported by adequate subsidiary findings, are unlawful, erroneous, arbitrary, capricious, and unconstitutional and operate to deprive Petitioners of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, and constitute and result in the exercise of authority in excess of statutory jurisdiction, authority, or limitations; and Petitioners seek rehearing on each and every one of the following purported findings for the foregoing reasons and on the grounds hereinafter stated:

(1) Finding No. (1) on the grounds that:

(a) As stated in paragraph I above.

(b) The rate schedules prescribed by the said Order of October 27, 1949, if effective, would accomplish a further reduction in Penn Water's rates and charges for services to Baltimore Company, than that prescribed by the Commission's Order of January 5, 1949, in the following respects:

(i) Rate Schedule (A) for services to Baltimore Company provides for a reduction in Penn Water's annual charge to Baltimore Company to an amount which is \$141,777 less than the annual charge ordered in the Com-

mission's Order of January 5, 1949. Said reduction in revenues is required under Rate Schedule (A) to be made in the form of a credit to Baltimore Company without provision for any offsetting credit to Penn Water for such taxes as may be payable by Penn Water on said amount of \$141,777. If taxed at a Federal rate of 38%, Federal taxes alone would amount to over \$53,000. Said reduction in revenues is not required by the Commission's Order of January 5, 1949, or in the findings and opinion issued in conjunction therewith.

(ii) Rate Schedule (A) also requires as a credit to Baltimore Company a fuel cost adjustment, pursuant to a formula therein set forth, for variations from the average cost of fuel per kilowatt hour in the year 1946 at steam stations of Baltimore Company, to be applicable to the kilowatt hours sold to The Pennsylvania Railroad Company. The amount of said credit so required to be made by Penn Water is estimated at \$51,400 for the eleven months period ended December 31, 1949; which facts Petitioners hereby offer to prove. No provision for such monthly fuel cost adjustment is made in the Commission's Order of January 5, 1949 or in its findings and opinion issued in conjunction therewith.

(iii) Rate Schedule (B) for Penn Water's services to PP&L requires a fuel cost adjustment for variations from the average cost of fuel per kilowatt hour in the year 1946 at steam stations of Baltimore Company. For the eleven months period ended December 31, 1949, the increased cost to PP&L by reason of said fuel cost adjustment is estimated at \$109,500, an amount equal to which will be credited to Baltimore Company; and Petitioners hereby offer to prove such facts. Said fuel cost adjustment is not required by the Commission's Order of January 5, 1949 or its findings and opinion issued in conjunction therewith.

(iv) Rate Schedules (C) and (D) for Penn Water's services to Philadelphia Company and Metropolitan Edison Company prescribe a formula, originated by the Commission for fuel cost adjustment. For the eleven months period ended December 31, 1949 the increased costs to Philadelphia Company and Metropolitan Edison Company by reason of said fuel cost adjustment are estimated at \$34,000 and \$22,800, respectively, amounts equal to which will be credited to Baltimore Company; and Petitioners hereby offer to prove such facts. Said formula is not required by the Commission's Order of January 5, 1949 or its findings and opinion issued in conjunction therewith.

(c) The effect of the rate schedules prescribed by the said Order of October 27, 1949 is to reduce Penn Water's revenues below the amount required by the Commission's Order of January 5, 1949 and its findings and opinion issued in conjunction therewith, by (i) the amount of \$141,777 required to be credited annually to Baltimore Company as set forth in paragraph (b) (i) above, and (ii) an amount, estimated at \$51,400 for the eleven months period ended December 31, 1949, to be credited to Baltimore Company on account of the additional fuel cost adjustment required in the alleged cost of service to The Pennsylvania Railroad Company in Pennsylvania, as set forth in paragraph (b) (ii) above.

(d) The rate schedules prescribed by said Order of October 27, 1949, insofar as the amount of \$141,777 required to be credited to Baltimore Company is concerned, constitutes an adjustment or revision of the divisional agreement between Penn Water and Baltimore Company for division of Pennsylvania Railroad revenues, without authority or jurisdiction in the Commission under the Federal Power Act to regulate such divisions.

(2) Finding No. (2) on the grounds as stated in paragraph I (5) above.

*III—The Commission's Order*

The Commission's orders or requirements in its Order issued October 27, 1949, are erroneous in law and fact, are contrary to the evidence, and are unsupported by any substantial evidence, unsupported by findings, and are unlawful, erroneous, arbitrary, capricious, and unconstitutional, operate to deprive Petitioners of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States and constitute and result in an exercise of authority in excess of statutory jurisdiction, authority or limitations; and Petitioners seek rehearing on each and every one of said orders or requirements as follows:

(1) Paragraphs (A), (B) and (C) of the said Order on the grounds specifically set forth in this Application.

(2) Paragraphs (B) and (C) of the said Order constitute an unlawful attempt to amend and revise the Commission's Order of January 5, 1949, as amended by the Commission's Orders of January 31, 1949 and February 28, 1949, after the filing of Petitioners' Petition for Review in the United States Court of Appeals for the District of Columbia Circuit (No. 10,236) and after certification and filing with that Court of the transcript of the record upon which the order complained of was entered. The Commission was and is wholly without jurisdiction, power, or authority to amend or modify its Order of January 5, 1949, as amended, by reason of the provisions of Section 313 (b) of the Federal Power Act, which vest exclusive jurisdiction in the Court under such circumstances.

(3) The Commission's order of October 27, 1949 is further illegal, null and void by reason of the fact that the specified fuel cost adjustments and annual credit of \$141,777 were ordered by the Commission without notice to Petitioners or the Pennsylvania customers and without affording Petitioners or the Pennsylvania customers any oppor-



tunity to be heard thereon or of presenting evidence with respect thereto in violation of Sections 20 and 206. (to the extent, if any that such section may be applicable to Penn Water) of the Federal Power Act, Sections 4 and 5 of the Administrative Procedure Act and the Fifth Amendment to the Constitution.

(4) Paragraph (B) of said Order of October 27, 1949 is unlawful in that it constitutes an attempt to prescribe a rate reduction in excess of that prescribed by the Commission's Order of January 5, 1949, effective retroactively to February 1, 1949, without authority under the Federal Power Act.

WHEREFORE, Petitioners respectfully pray that the Commission grant a rehearing in respect of its Order of October 27, 1949 and accompanying opinion and findings to the end that it forthwith enter an Order abrogating and annulling its said opinion and findings and Order in entirety.

Respectfully submitted,

Randall J. LeBoeuf, Jr.,  
Lauman Martin,  
Craig Leonard,  
F. G. Awalt,  
Raymond Sparks,  
Daryal A. Myse,  
Preston C. King, Jr.

Counsel for Petitioners

Dated at Washington, D. C.  
November 25, 1949.

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*Exhibit D to Petition for Review*

DISTRICT OF COLUMBIA, ss:

The undersigned, being first duly sworn, states that he is counsel for the applicants in the foregoing application; that he has read said application and knows the contents thereof; and that all of the statements contained therein are true and correct to the best of his knowledge, information or belief.

Raymond Sparks

Sworn to and subscribed before me, a notary public, in and for said District of Columbia; this 25th day of November, 1949.

Flora A. Myers  
Notary Public

(SEAL)

My commission expires October 14, 1953

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof properly addressed to:

HOWARD E. WAHRENBROCK, Assistant General Counsel,  
and REUBEN GOLDBERG, Attorney,  
Federal Power Commission,  
Hurley Wright Building  
Washington 25, D. C.

CHARLES D. HARRIS, General Counsel  
The Public Service Commission of Maryland  
Munsey Building  
Baltimore, Maryland

CHARLES E. THOMAS, Counsel, and ARTHUR J. DISKIN,  
Attorney,  
Pennsylvania Public Utility Commission  
Harrisburg, Pennsylvania

G. KENNETH REIBLICH, Counsel for  
Consolidated Gas, Electric Light and Power  
Company of Baltimore,  
Baltimore, Maryland.

Dated at Washington, D. C., this 25th day of November,  
1949.

Raymond Sparks

**EXHIBIT E****UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION**

Before Commissioners: Nelson Lee Smith, Chairman;  
Thomas C. Buchanan and Claude L. Draper.

December 14, 1949

In the Matter of  
Pennsylvania Water & Power Company

} Docket No.  
IT-5915

**ORDER DENYING APPLICATION FOR REHEARING  
OF ORDER ISSUED OCTOBER 27, 1949**

On November 25, 1949, Pennsylvania Water & Power Company and Susquehanna Transmission Company of Maryland (hereinafter referred to as "Respondents"), filed an application for rehearing of the Commission's order issued October 27, 1949. That order rejected rate schedules proffered by Respondents on May 31, 1949, and prescribed rate schedules, which we found would effectuate the requirements of the Commission's order issued January 5, 1949, doing so subject to the terms and conditions of the stay order issued April 29, 1949, by the United States Court of Appeals for the District of Columbia Circuit.<sup>1</sup>

We have carefully reviewed Respondents' specifications of error of fact and of law and find nothing which warrants the granting of rehearing of the order issued October 27. We may, however, briefly notice several of the specifications of error.

Respondents allege that the rate schedules prescribed by our October 27 order effect reductions different from

1. This stay was issued in connection with the Petition for Review of the January 5 order filed by Respondents on April 22, 1949, in *Pennsylvania Water & Power Company, et al. v. FPC*, No. 10,236.



those contemplated by our January 5 order. This, it is alleged by Respondents, is accomplished by the inclusion in the rate schedule prescribed for service to Consolidated Gas Electric Light and Power Company of Baltimore ("Baltimore Company") of a credit of \$141,777 to Baltimore Company, which, it is asserted, was not required by our January 5 order, and by the inclusion in the rate schedules of fuel cost adjustment clauses, whereas, it is asserted, the January 5 order contains no requirement therefor. Respondents allege that the Commission has thereby modified its January 5 order without authority since exclusive jurisdiction to affirm, modify or set aside the January 5 order vested in the Court of Appeals on June 2, 1949, when we filed with that Court the transcript of the record of the proceedings upon which the January 5 order was based (Section 313 (b), Federal Power Act).<sup>2</sup> Of course, it was not and is not our intention to modify the January 5 order in prescribing rate schedules.

The requirement, in the schedules prescribed by our order of October 27, 1949, that Penn Water credit to Baltimore Company the amount of \$141,777 annually is necessary to effectuate our order of January 5, 1949, according to the terms of the January 5 order and the terms of our Opinion No. 173 which was incorporated as a part of that order.

As that opinion made plain, an error in the division between Penn Water and Baltimore Company of revenues received from the Pennsylvania Railroad, which previously had been of no importance, became important with our order of January 5, and required correction in the new rate schedules, in order to prevent evasion of the rate re-

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2. On November 18, 1949, Respondents filed a motion in the Court to stay the order issued October 27, on the ground that it modified the order of January 5 in violation of Section 313(b) of the Federal Power Act for the reasons stated above. On November 25, 1949, we filed objections to that motion and, on November 29, 1949, Respondents filed a reply to our objections. Thereafter, on November 30, Respondents applied for oral hearing on their motion and, on December 1, 1949, we filed an answer to the motion for oral argument. The Court has yet taken no action on either motion.

duction we had prescribed. Under the arrangements prevailing prior to our order of January 5, Baltimore Company was entitled, in the computation of the payment to be made by it to Penn Water, to a credit for all other revenues received by Penn Water, including those for service to the Pennsylvania Railroad in Pennsylvania. That is to say, Baltimore Company paid to Penn Water whatever residual amount was necessary to bring Penn Water's total revenues up to the figure necessary to provide Penn Water with a contractually formulated total cost of service for all its operations. But, we found, Penn Water had been treating as revenue to it from the Railroad an amount which was excessive by \$141,777. This excess was the amount paid by the Railroad for certain special facilities, the costs of which were borne by Baltimore Company and which we specifically held should be treated as revenue to Baltimore Company. The companies' assignment of this revenue to Penn Water had been the result of an improper division between Penn Water and Baltimore Company of the lump sum payments received from the Railroad for service rendered to it by Penn Water in Pennsylvania and by Baltimore Company in Maryland. This error in the division was, however, immaterial to the companies because of the fact we have referred to, that Baltimore Company only paid Penn Water for energy the residual amount necessary to bring its total revenues to the predetermined level. Thus the excess revenues mistakenly assigned to Penn Water were merely an additional amount deducted in determining the residual amount paid by Baltimore Company, and Baltimore Company's loss of \$141,777 revenue from the Railroad was off-set by a \$141,777 reduction in cost to it of its energy and power from Penn Water.

However, when we confined our inquiry to the rates Penn Water charges its resale customers, we could not consistently require that, in computing the charge to Baltimore Company, a credit be given that Company for all of Penn Water's revenues from the Railroad, because to do

so would deprive Penn Water of its excess revenues under the rates it charged the Railroad. We then were faced with the necessity of leaving in Penn Water's hands the amount by which the charge to the Railroad exceeded the cost of serving it, and had to determine the proper amount of that excess to be left untouched. Accordingly in our order of January 5 (mimeographed opinion, p. 142), we made "an adjustment of revenues received for special facilities from Pennsylvania Railroad, in the amount of \$141,777 \* \* \* by adding the amount to revenues from Baltimore Company and deducting it from revenues from the Pennsylvania Railroad." As a result of this adjustment the excess revenues from the Railroad were found to be \$222,475, and the excess revenues from Baltimore Company, \$1,733,318 (*ibid.*, pp. 139, 142, 166), and we stated (*ibid.*, p. 167) that in "computing the power bill to Baltimore Company \* \* \* there shall be deducted \* \* \* electric revenues received from others, \* \* \* except the excess revenues, calculated at \$222,475 for the year 1946, and income taxes associated therewith, from Pennsylvania Railroad." By thus excluding the \$141,777 in computing Penn Water's excess revenues derived from the Railroad, we made it unmistakably clear that the \$141,777 was not to be retained by Penn Water. Hence the provisions of our order of October 27, in prescribing schedules which prevent Penn Water from retaining that \$141,777, did no more than effectuate the requirements of the January 5 order.

That our order of January 5 was plainly understood as requiring this result is manifest from Respondents' petition for court review of our January 5 order, for they there assign as one of the objections to that order that we had improperly made the division of revenues between Baltimore Company and Respondents for service to the Railroad which involves the \$141,777 adjustment; also from Respondents' designation of Exhibit 433 for printing on that review, that exhibit relating solely to the nature and propriety of the \$141,777 adjustment.

As to the inclusion of fuel cost adjustment clauses, if by their specifications of error Respondents mean to say that the January 5 order does not, in so many words, spell out the details of the rate schedules required to be filed in the first instance by Respondents, of course, that is the case. The order of January 5 did not undertake to spell out the details of the rate schedules. If it had, there would have been no need to afford Respondents an opportunity in the first instance to file the schedules. The design of rate schedules to effectuate the general level of revenues prescribed is a separate step of the rate making process which permits some latitude as to details, provided the resulting rate schedules effectuate the reduction in rate level on a just, reasonable, nondiscriminatory and not unduly preferential basis. Examples of such latitude are found in the provisions with respect to charges for Rkvah and for differentiation in charges for different categories of power supplied Metropolitan Edison Company, which Penn Water proposed in the rate schedules it filed and which we adopted in those we prescribed. Similarly, in prescribing a fuel cost adjustment clause formula we took as a basis for measuring changes in costs of fuel the average cost of fuel for the year 1946, and required an adjustment to reflect the amount by which average fuel cost in the billing month varied from the average for the year 1946.

Penn Water omitted from the schedules it filed fuel cost adjustment clauses which had existed in some of its prior rate schedules. Penn Water's proposals in this regard were rejected because they resulted in rate schedules which would be discriminatory and unduly preferential, as fully explained in the October 27 order. To eliminate discrimination and unfairness in effectuating the requirements of the January 5 order we included in the schedules we prescribed fuel cost adjustment clauses which would provide rates and charges on a nondiscriminatory and nonpreferential basis. Respondents have not alleged that the effect of the fuel cost adjustment clause would be to reduce the re-



turn on investment, after operating expenses, below the 5 $\frac{1}{4}$ % which we prescribed for their business subject to our jurisdiction.

The Commission, therefore, orders:

The application for rehearing of the order issued October 27, 1949, be and the same is hereby denied.

By the Commission.

(s) LEON M. FUQUAY

Leon M. Fuquay

Secretary.

Date of Issuance: December 15, 1949,

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

## OPINION NO. 173

In the Matter of	}	Docket No.
Pennsylvania Water & Power Company		
		IT-5915

## NOTICE

Please note that the last sentence of the last paragraph on page 140 of Opinion No. 173 should read as follows:

"It is proper in this proceeding \_\_\_\_\_ etc."

Due to difficulty in reproducing page 140 the words "It is" became illegible in some of the copies printed.

(s) LEON M. FUQUAY  
Leon M. Fuquay  
Secretary.